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No.

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IN THE

Supreme Court of the United States

ESTATE OF MELVINE B. ATKINSON, DECEASED,
CHRISTOPHER J. MACQUARRIE, EXECUTOR,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Dated: July 11, 2003

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

108 pp

QUESTIONS PRESENTED

I. Whether the actual benefit bestowed upon charity should be recognized under 26 U.S.C. §2055(a)—not ignored in its entirety under an incomplete reading of §2055(e)(2) as is asserted by the 11th Circuit Court of Appeals.

II. Alternatively, even if the 11th Circuit was correct in applying §2055(e)(2), should the mere failure to cash the annual distribution checks of a Charitable Remainder Annuity Trust ("CRAT"), as defined under §§2055(e)(2) and 664, render the CRAT void, such that the IRS receives a windfall at the expense of charity?

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OPINIONS BELOW

The opinion of the Court of Appeals (App., *infra*, 1a-11a) is reported at 309 F.3d 1290. The opinion of the Tax Court (App., *infra*, 12a-23a) is reported at 115 T.C. 26.

JURISDICTION

The Court of Appeals entered its judgment on October 16, 2002. Petitions for rehearing were denied on February 3, 2003. App., *infra*, 24a-25a.

Jurisdiction in this action to redetermine an estate tax deficiency (arising from an IRS finding that the Estate of Melvine B. Atkinson was not entitled to recognize any charitable contribution) was conferred on the Tax Court by 26 U.S.C. §§6213(a) and 7442 of the Internal Revenue Code of 1986. The Tax Court held that no charitable deduction was allowable under 26 U.S.C. §2055(e) dealing with split-interest charitable trusts. The 11th Circuit Court of Appeals upheld this ruling, and now Petitioner seeks relief from this Court, asking that the Court to clarify a discrepancy between the 11th Circuit Court of Appeals and several other Courts of Appeals.

STATUTORY PROVISIONS INVOLVED

The relevant portions of 26 U.S.C. §§664, 2001, 2036, and 2055 are set forth in the Appendix, *infra*, 26a-31a.

STATEMENT OF THE CASE

Mrs. Atkinson devoted much of her life to charity. After losing her only child at the age of nine, she, together with her husband, contributed 20 acres of land adjacent to her home for the construction of an

elementary school. She took great pleasure from this contribution, by walking along the ridge and watching the children play below. She also gave generously to the Mayo Clinic that treated her husband before his death, to the Park Ridge Hospital for Children, and to the Covenant Presbyterian Church. Also, when a local policeman was shot and the Atkinsons learned the police force could not afford bullet proof vests, Mr. and Mrs. Atkinson bought vests for the entire force without claiming any charitable deduction.

Mrs. Atkinson wanted to leave virtually everything she owned to charity. As a result of her relatives attempting to take her property, she was concerned that some unscrupulous individuals might obstruct her charitable objectives. After engaging estate planning experts from Florida and North Carolina, the estate plan that evolved placed the majority of Mrs. Atkinson's assets in an irrevocable charitable trust ("Irrevocable Charitable Trust"), a smaller amount in an irrevocable non-charitable trust ("Expense Trust") to pay expenses of her estate (with the balance going to charity), and incorporated a will.

Mrs. Atkinson contributed $3,999,974 in stock to the Irrevocable Charitable Trust, entitling her to a five percent annuity during her life. Checks were sent to her but not cashed. She reported the checks on her income tax return, but left the money in the Irrevocable Charitable Trust.[1] At her death, four individuals ("Contingent Beneficiaries") could elect a five percent annuity, but that election would "take effect upon the death of Melvine B. Atkinson *only if* the Contingent Beneficiaries furnished their share of the funds for payment of any federal estate taxes or state death taxes for which trustee may be liable upon the death of Melvine B. Atkinson." If no Contingent Beneficiary

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[1] When the Estate filed its estate tax return, it included in Mrs. Atkinson's gross estate "UNCASHED CHECKS DISCOVERED AFTER DEATH," which included the annuity checks. (Stip. ¶12; Jt. Ex. 22, Sched. C; Tr. 387-388, 427).

agreed to pay his or her share of the estate taxes, then the Beneficiaries would receive no interest in the trust after Mrs. Atkinson's death and her Estate would be distributed entirely to charity.

Mrs. Atkinson died on June 7, 1993 at the age of 97. The value of the assets in the Irrevocable Charitable Trust and the Expense Trust was included in her estate for federal estate tax purposes. The assets in the Irrevocable Charitable Trust had a $4,284,307 net fair market value. All of the non-charitable Contingent Beneficiaries, including her caretaker (Mrs. Birchfield), elected not to pay their share of estate tax, and thereby failed to satisfy the condition precedent in the Irrevocable Charitable Trust. The refusals all occurred before the federal estate tax return was filed.

Shortly after Mrs. Atkinson died, Mrs. Birchfield made various claims against Mrs. Atkinson's Trusts and Estate. The Marion County, Florida Circuit Court (which held jurisdiction over the trusts and estate) approved the settlement of Mrs. Birchfield's claim.

SUMMARY OF THE REASONS FOR GRANTING THE PETITION

Petitioner has set forth Compelling Reasons for the Granting of this Writ of Certiorari in that the 11th Circuit has entered a decision in conflict with the decisions of several other United States Courts of Appeals on two important matters: (1) the interpretation of the Tax Laws in favor of Charities, and (2) the misinterpretation as to which portion of the tax code should have been applied. *See* Sup. Ct. R. 10. The 11th Circuit mistakenly relied solely upon the split-interest provisions of 26 U.S.C. §2055(e)(2) and its invocation of §664, instead of applying §2055(a) and the full charitable deduction it provides. In so finding, the

11th Circuit disregarded its binding precedent and the precedent of several other Courts of Appeals.

Alternatively, even if the Court finds the 11th Circuit did apply the proper statutory provision, the failure of the decedent to cash the distribution checks should not void the Charitable Remainder Annuity Trust ("CRAT"). Charities across the nation are dependant upon CRATs, and would be unduly harmed if the 11th Circuit ruling is allowed to stand. The importance of this case to all charities and the practical problems presented by the 11th Circuit Appellate Opinion cannot be overstated. A single misplaced check over the life of a trust results in ignoring the existence of qualifying charitable testamentary beneficiaries, and forces those charities to pay the estate taxes. Under such a ruling an infirm testator, too ill to cash a check, could have her testamentary intent to leave her entire estate to charity voided for the benefit of the Internal Revenue Service ("IRS"). The charitable deduction provided by §2055 and its predecessors should be liberally construed to fulfill the "Absolute Priority" of Congress "to prefer charitable gifts to estate taxes." Further, the tendering of checks to Mrs. Atkinson during her lifetime constituted constructive payment and taxable income (which she reported on her returns). Thus, even these restrictive statutes require recognition of the actual benefit to charity.

REASONS FOR GRANTING THE PETITION

I. PETITIONER HAS SET FORTH COMPELLING REASONS FOR THE GRANTING OF THIS WRIT OF CERTIORARI.

Petitioner has set forth Compelling Reasons for the Granting of this Writ of Certiorari in that the 11th Circuit has entered a decision in conflict with the decisions of several other United States Courts of Appeals on two important matters: (1) the interpretation

of the Tax Laws in favor of Charities; and, (2) the misinterpretation as to which portion of the tax code should have been applied. *See* Sup. Ct. R. 10 (2003). The 11th Circuit's opinion in this case is in conflict with the precedent of the Fifth, Eighth, and Tenth Circuits, and is contrary to its own binding precedent in *Commissioner v. Citizens & S. Nat'l Bank.*[2] *See Whitehead v. Commissioner*, 3 T.C. 40, 55 (1944), *aff'd sub nom. Commissioner v. Citizens & S. Nat'l. Bank*, 147 F.2d 977 (5th Cir. 1945) ("*C&S*"); *Oetting v. United States*, 712 F.2d 358 (8th Cir. 1983); *First Nat'l Bank of Fayetteville v. United States*, 727 F.2d 741 (8th Cir. 1984); *Flanagan v. United States*, 810 F.2d 930 (10th Cir. 1987); *Warren v. United States*, 981 F.2d 776 (5th Cir. 1993).

II. THE ACTUAL BENEFIT BESTOWED UPON CHARITY SHOULD BE RECOGNIZED UNDER 26 U.S.C. §2055(a) — NOT IGNORED IN ITS ENTIRETY UNDER AN INCOMPLETE READING OF §2055(e)(2) AS IS ASSERTED BY THE 11th CIRCUIT COURT OF APPEALS.

The foundation for judging this charitable contribution deduction for federal estate tax purposes begins with Sections 2001, *et seq.* of the Internal Revenue Code of 1986. *See* 26 U.S.C. §2001 *et seq.* Those sections impose a federal estate tax on the value of all property passing on the date of death. Under §2036, the gross estate includes any property over which the decedent retained a life estate. Hence, the trust corpus in Mrs. Atkinson's Irrevocable Expense Trust and Irrevocable Charitable Trust are included in her estate

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[2] It should be noted that *Citizens & S. Nat'l Bank* was binding precedent on the 11th Circuit, under *Hope v. Pelzer*, 536 U.S. 730 (2002), since Cases decided by the United States Court of Appeals for the Fifth Circuit before 1981 are binding precedent in the Eleventh Circuit today.

as of the date of her death. In turn, §2055 allows an offsetting charitable deduction for property passing to or for the benefit of a charity. Subsection (a) of §2055 allows a full charitable deduction for any property passing where the sole qualifying beneficiaries are charities. Instead of applying §2055(a) and the full charitable deduction it provides, the 11th Circuit mistakenly relied solely upon the split-interest provisions of §2055(e)(2) and its invocation of §664.

A. THE 11TH CIRCUIT'S CONCLUSION IN THIS CASE IS INCONSISTENT WITH ITS PREDECESSOR'S HOLDING IN C&S AND IS INCONSISTENT WITH THE CONCLUSIONS BY OTHER CIRCUIT AND DISTRICT COURTS THAT SECTION 2055(A)—NOT 2055(E)—GOVERNS IN THESE CIRCUMSTANCES.

The 11th Circuit Court mistakenly relied upon §2055(e)(2), despite the reality that the complexities of that provision are never reached. Section 2055(e)(2) allows an estate tax charitable deduction whenever a "split-interest" trust exists *after* the decedent's death and meets certain conditions contained in §664. *See* 26 U.S.C. §2055(e)(2). To fall within the grasp of §2055(e)(2), two thresholds must be crossed:

i. First, "an interest . . . in the *same property* [must pass] . . . from the decedent to a person, or for [a] use," for charitable purposes," and

ii second, "an interest . . . *other than an interest which is extinguished upon the decedent's death*[,] *in the same property* [that will pass] . . . *from the decedent to a person, or for a use,*" that is *not charitable* [i.e. a non-charitable person]. 26

U.S.C. 2055(e)(2) (emphasis added).

If those two thresholds are crossed, the estate tax charitable deduction is allowable if the charitable remainder interest is a certain type of trust including a charitable remainder annuity trust ("CRAT"). Here, however, those two thresholds are not met on or after the date of Mrs. Atkinson's death since no testamentary non-charitable beneficiary ever qualified. As a result, the Irrevocable Charitable Trust was a charitable remainder trust when it was formed. Mrs. Atkinson held the life estate but, when the life estate was "extinguished upon [her] death," the Trust was purely charitable for testamentary purposes since no non-charitable testamentary beneficiary ever qualified. 26 U.S.C. §2055(e)(2)(ii).

A non-charitable interest in the property must pass *"from the decedent." See* 26 U.S.C. §2055(e)(2)(ii). The unequivocal terms of Mrs. Atkinson's Irrevocable Charitable Trust establish that the payments to Mrs. Birchfield did not "pass from Mrs. Atkinson" based on the undisputed facts that: (1) her overwhelming intent was to benefit charity; (2) she deliberately made the Trust irrevocable; and (3) she imposed a specific condition precedent on the potential limited benefit for a select number of non-charitable beneficiaries. In short, she allowed no deviation from her commitment to maximizing the benefit to charity.

In addition to the statutory exclusion of Mrs. Atkinson's life estate, the precedent of the Fifth, Eighth, and Tenth Circuits, and the Commissioner's own rulings confirm that the *post*-mortem settlement of Mrs. Birchfield's claims does not create a charitable/non-charitable split-interest passing from the decedent in the same property. Thus, the outright charitable contribution provisions of §2055(a) still control in Mrs. Atkinson's situation—not the more complicated split-interest provisions under §2055(e)(2).

Warren v. United States, 981 F.2d 776, 781 (5th Cir. 1993); *Flanagan v. United States*, 810 F.2d 930, 932 (10th Cir. 1987); *First Nat'l Bank of Fayetteville v. United States*, 727 F.2d 741, 742 (8th Cir. 1984); *Oetting v. United States*, 712 F.2d 358, 361 (8th Cir. 1983); Rev. Rul. 78-152, 1978-1 C.B. 296; Rev. Rul. 83-20, 1983-1 C.B. 4; and Rev. Rul. 89-31, 1989-1 C.B. 277.

Read in conjunction with *C&S*, 147 F.2d at 981; *Norris v. Commissioner*, 134 F.2d 796, 801 (7th Cir. 1943); *Hight v. United States*, 256 F.2d 795, 802 (2d Cir. 1958); *Northern Trust Co. v. United States*, 78-1 U.S.T.C. ¶13, 229 (N.D. Ill. 1977); and *Estate of Strock v. United States*, 655 F.Supp. 1334, 1339, 1341 (W.D. Pa. 1987), these cases and rulings establish a recurring principle: in order to encourage charitable giving, upon which we as a nation depend, charitable deductions will be sustained whenever an actual and measurable benefit is bestowed upon charity—regardless of whether the original documents or a subsequent settlement support the deduction. In each instance, the Courts concluded that subsection (e)(2) has no application, for it requires that the non-charitable party: (i) receive an interest in the *same* property passing to charity; and (ii) receive that property *from the decedent*—not from a departure by the fiduciary.

Ironically, here the Congressional purpose for adoption of the §2055(e)(2) was to better match the deduction for the benefit of charities—not ignore the actual benefit to the charities. The United States Court of Appeals for the Eighth Circuit discussed this Congressional purpose in *First National Bank of Fayetteville* under circumstances that are indistinguishable from those faced by Mrs. Atkinson's estate. 727 F.2d at 747-48. In *First National*, Mr. Cannon died leaving his residuary estate to a charitable trust for the University of Arkansas. *Id.* at 742-43. His wife, Grace Cannon, was entitled to $100 per month under

the trust. *Id.* Mrs. Cannon elected to take against the will. *Id.* An agreement was reached between Mrs. Cannon and the fiduciary under which she was paid a lump sum of $50,000 plus $600 per month for the rest of her life. *Id.* at 743. Like Mrs. Atkinson, she died shortly thereafter. *Id.* The Court determined:

> Under the settlement agreement in this case, it is clear that a certain portion of the residuary estate is not subject to diversion for a non-charitable purpose. . . . The remainder of the property is not subject to diversion for a non-charitable purpose and is certain to be received by the Scholarship Foundation. *First Nat'l Bank*, 727 F.2d at 747.

Further, the court reasoned that "[t]he special requirements of §2055(e) were meant to provide a better means of assuring that the amount received by the charity will accord with the charitable deduction allowed to the donor." *Id.* at 748.

The Eighth Circuit held that the payments to Mrs. Cannon *did not constitute part of the same property passing to the charities* and hence, Section 2055(a)—not 2055(e)—governed.[3]

Like the Eighth Circuit, the Tenth Circuit was faced with a *post*-mortem settlement in *Flanagan v. United States*, 810 F.2d 930 (10th Cir. 1987). There, the decedent executed a trust for the benefit of the decedent's heirs and certain charities. *Id.* at 931. After his death, the heirs filed an objection to the trust. *Id.*

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[3] In *Estate of Shelfer v. Commissioner*, 86 F.3d 1045 (11th Cir. 1996), the 11th Circuit recognized the Congressional intent and the policy favoring the liberal construction of the federal estate tax marital deduction. The same liberal construction should be applied to the charitable deduction at issue here in order to give effect to Congress' intent and the overriding public policy concerning charitable donations.

The heirs and trustees executed an agreement in which the heirs and a charitable foundation split the estate assets. The government contended that the settlement created a non-qualifying split-interest trust ineligible for a charitable deduction under §2055(e)(2). *Id.* at 933.

By contrast, the estate argued, and the Tenth Circuit agreed, that no split-interest was created based on the *post*-mortem settlement. The interest that passed to the non-charitable beneficiaries versus the interest passing to the charity was not "in the same property." *Id.* at 933, n.3. Again like the Eighth Circuit in *First National*, the Tenth Circuit reasoned that §2055 encourages gifts to charity and bona fide *post*-mortem settlements are not an abuse that §2055(e)(2) was enacted to eliminate:

> Section 2055(e)(2) was enacted in 1969 to eliminate an abuse of the charitable deduction through the split interest bequest. Congress was concerned with situations in which a non-charitable beneficiary retained a substantial interest in the estate, and benefited from a charitable deduction for a remainder or other interest was significantly disproportionate to the actual value ultimately received by the charity. [Citations omitted]. *Flanagan v. United States*, 810 F.2d 930, 934-35 (10th Cir. 1987).

After suffering losses in *Flanagan*, *Strock*, and *Northern Trust*, the Commissioner changed his position to conclude that any bona fide *post*-mortem settlement would not create a split-interest for Section 2055(e)(2) as the interest the charity receives and the interest the non-charitable person receives under the settlement are not interests "in the same property." Rev. Rul. 89-31, 1989-1 C.B. 277. Instead, the estate

would be entitled to a charitable deduction under Section 2055(a).

For at least two reasons, the conclusion that a *post*-mortem settlement does not create a split-interest and invoke Section 2055(e)(2) has greater application here than in *First Nat'l Bank of Fayetteville, Flanagan, Oetting,* and the Commissioner's ruling. First, the non-charitable beneficiary in those cases was entitled to some interest under the terms of the governing instrument (i.e., will or trust). Here, Mrs. Birchfield never qualified under the terms of the Irrevocable Charitable Trust and instead received a settlement only after threatening the trustee and his representative with assault and arson. Second, Mrs. Atkinson's two Trusts satisfied promptly all of Mrs. Birchfield's claims *in full* during the period of probate. Hence, the charities have always been entitled to 100% of the net assets in the Irrevocable Charitable Trust, with no obligation of any sort to Mrs. Birchfield for the last five years. Just as the Eighth and Ten Circuits reasoned, this devotion to charity is not an abuse and certainly not an abuse §2055(e)(2) was enacted to eliminate. The 11th Circuit should have fulfilled liberally the Congressional purpose and recognized the actual benefit to charity.

B. THE 11TH CIRCUIT OPINION OVERLOOKS THE TWO STATUTORILY ENDORSED CRITICAL PORTIONS OF THE REGULATION—THE "NEGLIGIBLE" NATURE OF CONTINGENT INTERESTS "PASSING" FROM MRS. ATKINSON IS DETERMINED AT THE "DECEDENT'S DATE OF DEATH"—NOT AT INCEPTION OF THE TRUST.

The linchpin of the 11th Circuit Opinion is that the Contingent Beneficiaries' non-charitable testamentary interests were "negligible" under Treas. Reg.

§20.2055-2(e) when the trust was established—not "as of the decedent's date of death." The 11th Circuit Opinion assumes incorrectly any trust formed as a charitable remainder annuity trust ("CRAT") *during life* is treated as a CRAT for federal *estate* tax purposes under §2055(e)(2). *See* App., *infra*, 6a. Even the Commissioner recognizes accurately at pages 41 and 42 of his brief that this assumption is not true: an *inter vivos* CRAT is *only* treated as a remainder trust for federal *estate* tax purposes (and invokes §2055(e)(2)), *if* charitable and non-charitable beneficiaries exist "after the decedent's death." The 11th Circuit Opinion overlooks that concession.

The linchpin, however, is most prominent where the 11th Circuit Court looked to "*when the trust was established*" to determine if the Contingent Beneficiaries' interests were "negligible" under Treas. Reg. §20.2055-2(e)(1)(i). That testamentary charitable regulation explicitly trumps the §2056 marital deduction regulation cited in the Opinion by the 11th Circuit and makes the "negligible/contingent" determination "as of the date of a decedent's death":

> The principles of section 2056 and the regulations thereunder shall apply for purposes of determining under this subparagraph whether an interest in property passes or has passed from the decedent. *If, however,* ***as of the date of a decedent's death****, a transfer for a private purpose is dependent upon the performance of some act or the happening of a precedent event . . . an interest in property will be considered to pass for a private purpose unless the possibility of occurrence of such act or event is so remote as to be* ***negligible****.* Treas. Reg. §20.2055-2(e)(1) (emphasis added).

Testing the condition "as of the date of a decedent's death" for purposes of the *estate* charitable contribution is also compelled by the earlier portion of the same regulation:

> (b) Transfers subject to a condition or a power. (1) If, as **of the date of a decedent's death**, a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be **negligible**. If an estate or interest has passed to, or is vested in, charity at the time of a decedent's death and the estate or interest would be defeated by the subsequent performance of some act or the happening of some event, the possibility of occurrence of which appeared **at the time of the decedent's death to be so remote as to be negligible**, the deduction is allowable. Treas. Reg. §20.2055-2(b) (emphasis added).

Focusing upon "the date of decedent's death" to determine if a split-interest trust will exist after Mrs. Atkinson's death, is consistent with the statutory exclusion from §2055(e)(2) of any non-charitable interest "which is extinguished upon the decedent's death." *See* 26 U.S.C. §2055(e)(2). Thus, if upon Mrs. Atkinson's death, no non-charitable interest continues, subsection (e)(2) is not applicable. It is also consistent with the terms of the Irrevocable Charitable Trust, which provide that any Contingent Beneficiaries' interest (and any opportunity for a post-death split-interest) ceases at Mrs. Atkinson's death if no election

by the Contingent Beneficiaries to pay the estate taxes is made.

C. THE PANEL OPINION ALSO OVERLOOKS THE CLEAR LANGUAGE IN THE SAME REGULATION THAT COINCIDES WITH THE EXPLICIT CONGRESSIONAL MANDATE IN §§2055(A) AND 2055(E)(3)(F): THE TESTAMENTARY CHARITABLE CONTRIBUTION STATUTE DISREGARDS NON-CHARITABLE INTERESTS SPURNED BY THE DUE DATE OF THE ESTATE TAX RETURN.

The same critical regulation relied upon by the 11th Circuit Opinion, §20.2055-2(e)(1), states explicitly that the application of this "negligible/contingent" interest rule (at decedent's death) is illustrated by the examples provided. Those examples show that the "negligible/contingency" standard *for life expectancies* is made at date of death. Example (6) in §20.2055-2(e)(1) demonstrates, however, that a non-charitable elective right (there a dower right, here the prerequisite of electing to pay taxes) is disregarded at date of death if the election is not made after death:

> *Example (6).* H devises Blackacre to X Charity. Under applicable local law, W, H's widow, is entitled to elect a dower interest in Blackacre. W elects to take her dower interest in Blackacre. For purposes of this paragraph (e)(1)(i), interests in the same property have passed from H for charitable purposes and for private purposes. If, however, W does not elect to take her dower interest in Blackacre, then, for purposes of this paragraph (e)(1)(i), interests in the same property have not passed from H for charitable purposes and for private purposes.

"H's widow" must necessarily forego the dower election after his death and before the estate tax return. The failure to make the election by the return due date results in the regulation recognizing that no non-charitable interest passed "as of the date of the decedent's death" and (e)(2) is not invoked.[4] That dovetails into the self-executing language in §2055(e)(3)(F) endorsed by the Commissioner at page 54 of his brief:

> If (by reason of the death of any individual, or by termination or distribution of a trust in accordance with the terms of the trust instrument) **by the due date for filing the estate tax return** (including any extension thereof) a reformable interest is in a wholly charitable trust or passes directly to [charity], a deduction shall be allowed for such reformable interest as if it had met the requirements of paragraph (2) on the date of the decedent's death. . . . Respondent's Br. at 54.

The statutory scheme is integrated. Again in §2055(a), Congress stated that the termination of such powers "before the date prescribed for filing the estate tax return" is deemed to be a qualified disclaimer:

> For purposes of this subsection, the complete termination **before the date prescribed for the filing of the estate tax return** of a power to consume, invade, or appropriate property for the benefit of an individual before such

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[4] Here, Mrs. Birchfield refused to comply with the irrevocable terms of the election long before the estate tax return was filed and the Probate Court put the remaining contingent beneficiaries to their election prior to the filing of the return. Without exception, they rejected the election and terminated their rights.

> power has been exercised by reason of the death of such individual or for any other reason shall be considered and deemed to be a qualified disclaimer. . . . 26 U.S.C. 2055(a); s*ee also* Treas. Reg. §20.2055-2(e)(1)(ii) (emphasis added).

The Commissioner conceded this point during oral argument before the 11th Circuit.[5] Specifically, the Commissioner conceded that, with the exception of his argument as to Mrs. Birchfield's settlement, when focusing on Mrs. Atkinson's death versus inception of the trust, the class of contingent beneficiaries did not create a post-death non-charitable interest under subsection (e)(2). The 11th Circuit Opinion overlooked this critical concession.

D. THE 11TH CIRCUIT OPINION ALSO OVERLOOKS THE PREREQUISITE FOR APPLICATION OF §2055(E)(2) THAT A NON-CHARITABLE "INTEREST IN PROPERTY" EXIST.

The 11th Circuit failed to understand the **absolute** requirement that the post-death *non-charitable* interest satisfy all five conjunctive elements before §2055(e)(2) draws its exception to §2055(a). The 11th Circuit Opinion cites Reg. §20.2056(c)-1(a)(5) and addresses *who* the recipient is but never directly addresses precisely *what* passed: *i.e.*, the requirement that there be a non-charitable "interest in property" in the first place. *See* App., *infra*, 9a. To be sure, Mrs.

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[5] The Petitioner's recollection on this concession are vivid. Indeed, the Estate confirmed the concession in its rebuttal argument. However, the Court of Appeals alone has access to the tapes. Given the importance of this case to so many charities, the Estate begs this Honorable Court to confirm this critical concession.

Atkinson's life estate constituted an "interest in property." The same, however, cannot be said of the contingent secondary beneficiaries whose interests were contingent both upon their surviving Mrs. Atkinson and electing to pay their share of her estate tax. What they received was a *mere expectancy* under Florida law.[6] *See In re Griffin's Estate*, 164 So.2d 883, 887 (Fla. Dist. Ct. App. 1964); *Bedell v. Bedell*, 523 So.2d 166, 168 (Fla. Dist. Ct. App. 1988). A mere expectancy is not an "interest in property."

In comparison, Mrs. Atkinson's interest in property was a vested life estate, but is the best example of the §2055(e)(2) exclusion "an interest which is extinguished upon the decedent's death." As noted, the 11th Circuit Opinion gets embroiled in this life estate under §664 by way of a reversed statutory sequence. Section 664 is *never* invoked unless and until all five §2055(e)(2) prerequisites are first satisfied.

III. ALTERNATIVELY, EVEN IF THE 11TH CIRCUIT WAS CORRECT IN RULING §§2055(E)(2) AND 664 APPLIED, MRS. ATKINSON'S FAILURE TO CASH HER ANNUAL DISTRIBUTIONS UNDER HER LIFE ESTATE SHOULD NOT BE ALLOWED TO VOID THE CRAT.

There is nothing in our society greater than an act of Charity, where one gives freely to another, asking nothing in return. Charities play an incredibly vital role in our society and, as a result, charitable giving is typically given favorable status under our tax laws. Charities help "aid in the accomplishment of many social goals which our federal and local governments otherwise cannot or will not accomplish."

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[6] The law of the jurisdiction under which the interest passes, in this case Florida Law, controls in determining the nature of the property interests. *Estate of Holland v. Commissioner*, 64 T.C. 499, 503 (1975).

Brinley v. Commissioner, 782 F. 2d 1326, 1336 (5th Cir. 1986) (Hill, J., dissenting). Our society depends on charitable organizations to provide us with a multitude of services, many as diverse as our great nation. Charities, such as the Mayo Clinic, help to fund medical research and to provide medical care to the indigent. Charities, such as the Harvard Foundation, help to support education by promoting racial and ethnic diversity within higher education and offering scholarships and srants, allowing those who may not be able to afford college to attend. Countless soup kitchens and homeless shelters across our nation help to feed, clothe, and house the indigent. Most recently, Charities, such as the United Way and the Red Cross, sprang into action following the events of September 11, 2001, helping to provide for the families of those lost in what was indeed a great national tragedy. These are but a few examples of the great services that charities provide to us all. Obviously, a list of charities and the valuable services they provide could go on almost indefinitely.

Many charities have come to rely heavily on gifts that come via Charitable Remainder Annuity Trusts ("CRAT"). While most of us may give generously what we can in small amounts, there are some philanthropists who, because of fortunate circumstances and great wealth, can afford to give gifts not in the thousands, but in the millions. These people are often likely to give to charities via a CRAT because using a CRAT ensures more money will go into the hands of these invaluable charities. As a result, charities across the nation are dependant upon CRAT's, and would be harmed unduly if the 11th Circuit ruling is allowed to stand.

The importance of this case to all charities and the practical problems presented by the 11th Circuit Appellate Opinion cannot be overstated. A single misplaced check during a charitable trust's existence results in ignoring the sole qualifying testamentary

beneficiaries and charities, and forces those charities to pay the estate taxes. Or worse yet, what if a check was not misplaced, but the beneficiary was rendered unable to cash the check? It is not unforeseeable that an elderly philanthropist, engaged in the process of devising their estate for the benefit of charity, may potentially befall some health difficulty which may render her or him unable to cash distribution checks. Clearly, such tragic circumstances should not result in nullifying someone's testamentary desire to leave a lasting legacy, resulting in a windfall to the Internal Revenue Service at the expense of the charities that play such an important role in bettering our society.

The law is clear and the Court has the power, indeed the obligation, to protect charities under the plain meaning of the critical charitable statute and regulation. Further, both the Tax Court and the 11th Circuit Court of Appeals failed to follow conclusive precedent that both charitable statutes and testamentary documents should be liberally construed to the end of encouraging gifts to charity. *See* H.R. Rep. No. 1860, 75th Cong. 3d Sess. 19, 742 (1938); *Helvering v. Bliss*, 293 U.S. 144, 150-51 (1934) ("[t]he exemption of income devoted to charity . . . [was a] liberalization[] of the law in the taxpayer's favor, were begotten from motives of public policy, and [is] not to be narrowly construed"); *Commissioner v. Citizens & S. Nat'l. Bank*, 147 F.2d 977, 979 (5th Cir. 1945), *aff'g sub nom. Estate of Whitehead v. Commissioner*, 3 T.C. 40, 55 (1944) ("*C&S*") ("tax provisions granting exemptions in respect of charities spring from profound concern for human welfare and are, therefore, liberally construed"); *see also Flanagan v. United States*, 810 F.2d 930, 934 (10th Cir. 1987); *First Nat'l Bank of Fayetteville v. United States*, 727 F.2d 741, 748 (8th Cir. 1984); *Hight v. United States*, 256 F.2d 795, 802 (2d Cir. 1958); *Estate of Sells v. Commissioner*, 10 T.C. 692, 699 (1948).

A. THE CHARITABLE DEDUCTION PROVIDED BY §2055 AND ITS PREDECESSORS SHOULD BE LIBERALLY CONSTRUED TO FULFILL THE "ABSOLUTE PRIORITY" OF CONGRESS "TO PREFER CHARITABLE GIFTS TO ESTATE TAXES."

For obvious reasons, the law encourages charitable contributions and favors the recognition of those contributions in a manner that measures fairly the actual benefit bestowed upon charities. As the United States Court of Appeals for the Tenth Circuit stated in *Flanagan*, 810 F.2d at 934-35:

> In enacting the charitable deduction provisions in [26 U.S.C.] §2055 and its predecessors, Congress sought to encourage gifts to charity. *Commissioner v. Estate of Sternberger*, 348 U.S. 187, 190 n.3, 75 S.Ct. 229, 231 n.3, 99 L.Ed. 246 (1955); *YMCA v. Davis*, 264 U.S. 47, 50, 44 S.Ct. 291, 292, 68 L.Ed. 558 (1924). We agree with the Seventh Circuit's formulation in *Norris v. Commissioner*, 134 F.2d 796 (7th Cir.), *cert. denied*, 320 U.S. 756, 64 S.Ct. 63, 88 L.Ed. 491 (1943), that congressional intent to prefer charitable gifts to estate taxes was "a case of absolute priority . . . . [While] loopholes should not be permitted to diminish estate tax payments by ostensibly charitable bequests which may never become effective," we cannot blindly resolve all doubts in favor of the IRS if we are to respect legislative intent to encourage gifts to charity.

In a case affirmed and embraced as the controlling precedent of the 11th Circuit, the Tax Court itself

rejected the harsh, Congressionally incongruent result sought in this case: effectively imposing tax on charities. As the Tax Court stated in *Estate of Whitehead v. Commissioner*, 3 T.C. 40, 55 (1944), *aff'd sub nom. Commissioner v. Citizens & S. Nat'l. Bank*, 147 F.2d 977 (5th Cir. 1945) ("C&S"):

> In so far as deductions should be disallowed in this case, the amount going to charity would be curtailed, and *in effect the tax be paid by the beneficiaries of charity*. In our opinion the object of the statute is to preserve to the use of charity, free from taxes entailed in deductions denied, that which the testator intended exclusively for charitable use; and to deny such deduction to the executor, prior to the formation of the charitable trust would defeat such object. (Emphasis added).

Under *C&S*, the Fifth Circuit requires that §2055 be applied in a fashion to fulfill Congress' intent to honor charitable gifts:

> Pointing out that tax provisions granting exemptions in respect of charities spring from profound concern for human welfare and are, therefore, liberally construed and that the test of the propriety of the claimed deductions is furnished by the terms of the will and not by what was done by the executor, [the Tax Court] determined all of the issues in the taxpayer's favor.
>
> * * *
>
> The Tax Court in its opinion . . . has elaborately treated the questions of law

> here raised, and that opinion has our approval. . . . *C&S*, 147 F.2d at 980.

Hence, the 5th Circuit's precedent in *C&S* requires deductions for charity be given a liberal construction. *Id.; Estate of Whitehead*, 3 T.C. at 48 ("Although the petitioner has the burden of showing its right to the deductions claimed, the element of charity requires liberal construction"). This broad construction derives from the benefit that such donations provide to the public, since "[t]ax provisions as to charities are begotten from motives of public policy and are not to be narrowly construed." *C&S*, 147 F.2d at 980. In the words of Judge Tuttle of the United States Court of Appeals for the Fifth Circuit, "[c]haritable deductions sprang from profound concern for human welfare." *Read v. United States*, 320 F.2d 550, 552 (5th Cir. 1963) (citing *C&S*). Nonetheless, both the Tax Court and 11th Circuit Court of Appeals failed to take this precedent into account. This resulted in overlooking Mrs. Atkinson's benevolent desire to help others and the public policy that underlies the principles of charitable deductions.

As in *C&S*, no doubt can exist on this record that Mrs. Atkinson was an extraordinarily charitable woman. From the gift of the property for the Atkinson Elementary School, through the contribution of bullet proof vests to the local police force, to the ultimate charitable bequest of almost everything she owned, Mrs. Atkinson's devotion to charity "has been sufficiently indicated and must be given effect." *C&S*, 147 F.2d at 980. Encouraging that charity must override flawed and incomplete technical references, that "in effect the tax be paid by the beneficiaries of charity." *Whitehead*, 3 T.C. at 55.

Consider the greater good that is discouraged by this holding. Assume that Jane Doe dies with a taxable estate of $1 million. If she is encouraged to give that $1 million to charity, then $1 million of good

will be done. If, on the other hand, the fallout from the Commissioner seeking a windfall from estates dedicated to charity is that Jane Doe is discouraged from charitable giving, the government only reaps one-half of that amount (at a 50 percent tax rate), and the remainder does not serve those less fortunate. Indeed, some cynics would ask whether a greater portion of every charitable dollar benefits those in need than the portion of each tax dollar remaining after the expense of governmental administration. For these and other practical reasons, Congress chose to encourage charity over estate taxes.

B. UNDER THE CODE AND A COMMONSENSE RATIONALE THE TRUSTEE'S ACTIONS DURING MRS. ATKINSON'S LIFETIME WERE PROPER BUT ARE IRRELEVANT.

The Tax Court's and the 11th Circuit's opinions, rely primarily on the belatedly raised contention that the fiduciary failed to make annual distributions to Mrs. Atkinson under her life estate and, therefore, §2055(e)(2) bars recognition of a single penny of the $4.2 million passing for the benefit of charities. For a host of reasons, that contention is wrong.

1. The 11th Circuit Failed to Address the Significance of Allowing this Unpled New Matter to be Asserted for the First Time on the Precipice of Trial That So Prejudiced the Estate.

Much of the 11th Circuit Opinion turns upon Mrs. Atkinson's alleged failure to cash her annuity checks and include them in income, but that proof was only missing because the Commissioner ambushed the Estate with the lifetime contentions on the

eve of trial.[7] Yet, the Opinion never addresses that prejudice. Ten days prior to the trial calendar, the Commissioner insinuated the factually intensive, unpled argument in this federal estate tax dispute that flaws existed in the pre-death distributions to Mrs. Atkinson, six to eight years earlier, during the 22 months before her death. Until that point, the entire case had turned on the post-mortem settlement of Ms. Birchfield's claim. Nothing in the Commissioner's Notice or pleadings ever hinted at this position. Upon receipt of the Commissioner's Trial Memorandum, the Estate promptly filed a Motion in Limine Regarding Vague Notice, Burden of Proof, and Failure to Raise New Issues. *See* App., *infra*, 33a. The Tax Court erred in denying that Motion and then relied upon the failure of the Estate to locate the corroborating ancient documents for its holding.

The Notice is the stereotypical "say nothing notice" that was common before Congress condemned such notices in adopting §7522(a) as part of the Taxpayer Bill of Rights. No factual or legal basis was identified—much less described. Section 7522(a) requires in mandatory terms that the Notice "shall describe the basis for . . . the tax due, interest, additional amounts . . . included in the notice." *Oetting v. Commissioner*, 112 T.C. 183, 195-196 (1999) (Reviewed decision).

The most critical missing documents were Mrs. Atkinson's 1991, 1992, and 1993 federal income tax returns which would have proved that she reported the income distributions and thereby absolutely refute

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[7] If they were true, the allegations relating to the handing of Mrs. Atkinson's life estate would still be serious and trigger serious *inter vivos* sanctions including increased taxable gifts and income, disallowed deductions, and a plethora of penalties. The 11th Circuit's opinion overlooks the Congressional *inter vivos* sanctions relating to those *inter vivos* allegations, and instead, imposes a harsh *testamentary* response to lifetime events.

the Commissioner's argument that she somehow circumvented the "private foundation" rules.

The Commissioner who belatedly raised these matters had sole possession of the original 1991, 1992, and 1993 federal income tax returns. If properly raised with enough warning, the Estate could have obtained those and the other six to eight year old documents to corroborate the largely uncontroverted testimony of the Trustee, counsel for Petitioner Stewart A. Marshall, and estate planner Robert A. Freeman. Due to the denial of the Estate's motion for continuance to address this issue, the Tax Court placed an insurmountable burden on the Estate.

This new matter was never properly raised and constituted a surprise that prejudiced the Estate. As such, this new matter should not have been injected at such a late stage. *See, e.g., Leahy v. Commissioner*, 87 T.C. 56, 64-65 (1986); *Estate of Horvath v. Commissioner*, 59 T.C. 551, 555-556 (1973). The prejudice to the Estate is proven by the Tax Court's and the 11th Circuit's primary reliance for their ruling on the failure of the Estate to locate six to eight year old corroborating documents in the midst of the maelstrom.

2. In Remarkably similar circumstances, the 11th Circuit Recognized that Departures by the Fiduciary Cannot and Should Not Alter the Controlling Testamentary Documents Relating to Charity.

From the foundation of encouraging charity, the decision by the predecessor of the 11th Circuit in *C&S* provides the best guidance in the most parallel situation. The United States Court of Appeals for the Fifth Circuit affirmed the Tax Court and sustained the charitable contribution deduction based on the prin-

ciple that "the test of the propriety of the deductions claimed is furnished by the terms of the will, and ***not by what was actually done thereunder by the [executor]***." *Estate of Whitehead*, 3 T.C. at 48, citing *Bowers v. Slocum*, 20 F.2d 350 (2d Cir. 1927) (emphasis added).

Consequently, the controlling testamentary provisions in the documents drawn by Mrs. Atkinson should govern with their overriding sense of charity. The Fifth Circuit in *C&S* reached that conclusion based on circumstances that are remarkably similar to those at hand:

> Neither are we in any doubt that in creating the foundation and in protecting the corpus against the unforeseen contingencies which arose after death, the executor, by defraying corpus charges out of income, has not deprived the charity of the exemption the will and statute conferred whether the view is taken that the use of the income to pay corpus charges was a charitable use or the view that it was not, but, being unauthorized by the will, it was a diversionary act of the executor without effect. The fact that the very large income was charged with the payment of very small bequests does not in any way alter the controlling fact that the will devised the whole corpus and, except for the bequests, the whole income to charity . . . .[8] Neither does the

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[8] To be sure, the Fifth Circuit in *C&S* wrestled with the relationship between charitable and non-charitable interests in an income tax context rather than an estate tax context. While the temporal point of reference differs between lifetime and date of death, the principles of not mixing charitable and non-charitable interests are exactly the same at whatever moment the particular tax dictates.

> fact that part of the income was temporarily diverted to defray corpus charges affect the dedication to charity provided by the will, or subject the exempt income to tax. . . . The Tax Court's judgment was right. It is Affirmed. *C&S*, 147 F.2d at 980.

Indeed, the circumstances weigh more heavily in favor of protecting the charities here than there. The belatedly raised dispute over the fiduciary's failure to make sure that Mrs. Atkinson cashed the distribution checks under her life estate is not only statutorily irrelevant under §2055(e)(2) (as "an interest which is extinguished upon the decedent's death"): that abstention operated to the benefit of the charities; no non-charitable testamentary beneficiary ever qualified under the unequivocal, irrevocable, and uncontroverted testamentary terms of the controlling documents; since Mrs. Atkinson died, the charities alone have been the sole qualifying beneficiary.

3. Even if §§2055(e)(2) and 664 applied, the tendering of checks to Mrs. Atkinson during her lifetime constituted constructive payment and taxable income.

Even if §§2055(e)(2) and 664 applied, the tendering of checks to Mrs. Atkinson during her lifetime constituted constructive payment and taxable income (which she reported on her returns). Thus, even these restrictive statutes require recognition of the actual benefit to charity. As proven by the income tax returns attached as Exhibit A of the Petition for Rehearing en Banc (*see* App., *infra*, 41a), Mrs. Atkinson reported the checks as income. Ironically, her attempt at added charity (not cashing the checks for herself) is

the dagger used to kill the charitable deduction. However, the law is clear: the right to receive income constitutes constructive receipt of that income. Treas. Reg. §1.451-2(a); *Williams v. United States*, 219 F.2d 523, 527 n.4 (5th Cir. 1955); Rev. Rul. 73-99, 1973-1 C.B. 412. That is why Mrs. Atkinson reported properly that taxable income on her income tax returns and why that aspect needs to be remanded. Otherwise, the result is inconsistent—constructive receipt means taxable income but does not mean "paid" for purposes of §664(d)(1)(A).

If this misinterpretation of the law is allowed to stand, it has the potential to wreak havoc on the many invaluable charities our society so greatly depends upon. A single misplaced check over the life of a trust results in ignoring the existence of qualifying charitable testamentary beneficiaries and forces those charities to pay the estate taxes. Or worse yet, under the 11th Circuit's holding, any single uncashed check over the life of a trust results in ignoring the existence of the sole qualifying testamentary beneficiaries.

It is not unforeseeable that an elderly philanthropist, engaged in the process of devising his estate for the benefit of charity, may be infirm. As a result of such infirmity, or even by pure chance, some health difficulty may befall the philanthropist that might render her or him unable to cash distribution checks. Clearly, such tragic, yet highly probable and common circumstances, should not result in nullifying someone's charitable testamentary desire to leave a lasting legacy and, instead, result in a windfall to the Internal Revenue Service. However, under the 11th Circuit's ruling, if the beneficiary was rendered unable to cash a distribution check because of some health difficulty, the entire testamentary plan to leave her or his estate to charity could be rendered void, at the expense of charities and for the sole benefit of the IRS.

4. An Accurate Reading of The Commissioner's Regulation Reveals a Reasonable Delay in Making Distribution is Acceptable.

The Estate invites the Court to consider carefully the description in 26 C.F.R. §1.664-2(a). Said regulation contemplates explicitly a reasonable delay in making distribution following the close of a taxable year invokes no sanctions. Five facts must be kept in mind when considering the reasonableness of Mrs. Atkinson's conduct: (i) the Trustee sent the checks; (ii) she was in advanced years when she chose not to cash the checks; (iii) she had a stroke before the first anniversary of forming the Trust; (iv) she passed away within only 22 months of formation; and, (v) her representatives reported the uncashed checks as an asset on her estate tax return.

CONCLUSION

For all of the foregoing reasons, Petitioners respectfully request that this Honorable Court grant the Petition.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-16536

U.S. Tax Ct. No. 20968-97

ESTATE OF MELVINE B. ATKINSON, Deceased,
CHRISTOPHER J. MACQUARRIE, Executor,
Petitioners-Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee

Appeal from a Decision of the
United States Tax Court
Joel Gerber, Presiding

Filed Oct. 16, 2002

ORDER AND OPINION

Before: BIRCH and COX, Circuit Judges, and GEORGE[1], District Judge. BIRCH, Circuit Judge:

In this tax appeal, we determine whether the failure of an estate to comply with tax regulations regarding annual disbursements from a charitable remainder annuity trust results in the complete denial of a charitable deduction, even when a substantial amount of money would flow to charity. The Tax Court held that no charitable deduction was allowable. Because the law is clear, we AFFIRM.

I. BACKGROUND

Melvine B. Atkinson, an extraordinarily charitable woman, intended to create an estate plan that first provided for chosen beneficiaries for their lifetimes and then donated the remainder of the estate to several charitable organizations. On 9 August 1991, in pursuit of this goal, Atkinson signed a will and created two trusts: the Melvine B. Atkinson Charitable Remainder Annuity Trust ("the annuity trust") and the Melvine B. Atkinson Irrevocable Trust ("the administrative trust"). The annuity trust, funded with stock worth approximately $4 million, would provide a lifetime annuity of $200,000 to Atkinson and, at her death, would divide a similar annuity between four beneficiaries for the terms of their lives, provided that those beneficiaries agreed to pay their share of any estate taxes due at Atkinson's death. After the death of the last beneficiary, any amount remaining in the annuity trust would be donated to certain charitable groups. The administrative trust, funded with stock worth approximately $1 million, existed to pay the funeral expenses of Atkinson, any outstanding claims against her estate at the time of her death, and any applicable estate taxes.

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[1] Honorable Lloyd D. George, U.S. District Judge for the District of Nevada, sitting by designation.

The Tax Court found that no annuity payments were ever actually made to Atkinson from the assets of the annuity trust. The estate continues to claim that checks were sent to Atkinson, but that Atkinson saw no need to cash them because her material needs were amply met by non-trust assets. However, this claim is undercut by the fact that the estate produced no copies of these checks or the cover letters that supposedly accompanied the checks to Atkinson, nor did the annuity trust's ledger reflect any outgoing annuity payments to Atkinson during her lifetime.

Upon Atkinson's death, the non-charitable beneficiaries next in line to the annuity trust's assets were compelled to make an election. Either they could accept the annuity and pay their share of Atkinson's estate taxes according to the terms of the annuity trust, or they could refuse Atkinson's gift. None of these non-charitable beneficiaries elected to accept the annuity under the terms of the trust. One potential beneficiary, Atkinson's caretaker Mary Birchfield, citing a putative inter vivos promise by Atkinson that Birchfield would not be held liable for any estate taxes resulting from her annuity from the trust, instigated litigation against the estate. Eventually, the trustee paid a settlement of $667,000 to Birchfield in satisfaction of all her claims against the estate and also resumed annuity payments to Birchfield in the amount set by the trust, which payments continued until Birchfield's death in 1997. Birchfield never paid her share of the estate taxes due on the money she received.

Before the settlement of Birchfield's claim, the estate was required to file its federal estate tax return. The taxable gross estate, according to the executor, consisted of Atkinson's annuity rights under the trust ($366,334.92) as well as the date-of-death value of both the annuity and administrative trusts ($4,284,308 and $1,484,854, respectively). The estate

claimed a charitable deduction in the amount of $3,894,535, representing the present value of the remainder interest in the annuity trust as of the date of Atkinson's death, measured under the assumption that Birchfield, whose claim against the estate had not been settled at that time, would prevail on that claim and be entitled to an annuity from the trust for the balance of her lifetime and, correlatively, that the charities would not take their remainder interest in the trust until Birchfield's death.

The Internal Revenue Service ("IRS") selected the estate's tax return for audit and found that the estate was not entitled to take any charitable deduction because the annuity trust failed to comply with certain statutory procedures applicable to the deductibility of charitable remainders.

With the disallowance of the charitable deduction, the IRS determined that the estate owed $2,654,976 in taxes. Because the administrative trust and the balance of other estate assets would not be sufficient to satisfy this tax liability, it became apparent that the remaining amount due would be paid by the annuity trust. The estate challenged the IRS's decision in the United States Tax Court, which agreed with the IRS that a charitable deduction was not appropriate. *See Atkinson v. Comm'r*, 115 T.C. 26, 32, 2000 WL 1030270 (2000).

II. DISCUSSION[2]

A. Standards of Review

The Tax Court's factual findings are reviewed for clear error, and its legal conclusions are reviewed de novo. *Davenport Recycling Assocs. v. Comm'r*, 220 F.3d 1255, 1258–59 (11th Cir.2000).

B. Deductibility of Charitable Remainders

A federal estate tax is imposed on "the transfer of the taxable estate of every decedent who is a citizen or resident of the United States." I.R.C. § 2001(a) (West 2002). A deduction is generally available for that portion of the estate that is directly devised to charitable organizations. *Id.* § 2055(a)(2). When property or money is given directly to the charity at the death of the decedent, then the amount of a charitable deduction that may be taken by the estate is easily calculated. However, when a decedent donates a remainder interest in property to charity, the valuation of the charitable deduction becomes more difficult. The estate tax return might be filed before the charity's interest in the property becomes possessory and can be conclusively valued for purposes of claiming a charitable deduction. This temporal disconnect provides an avenue by which unscrupulous estates may claim a large charitable deduction, then manage the split interest property in such a way that the benefit to the non-charitable beneficiaries is maximized, with the charity ultimately receiving much less value than that claimed as a deduction on the estate tax return.

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[2] To the extent that additional arguments are raised by the estate and not discussed in the body of this opinion, we find that those arguments are without merit and deserve no substantial discussion. In addition, since we decide that the trust was not a CRAT because of its failure to pay Atkinson a lifetime annuity, we do not reach the issue of whether the trust additionally failed due to its exposure to estate tax liability.

Recognizing this problem, Congress strictly limited the deductibility of charitable remainders by requiring that such an interest pass to the charity in the context of a "charitable remainder annuity trust" ("CRAT"), a "charitable remainder unitrust," or a "pooled income fund." *Id.* § 2055(e)(2)(A). The trust in this case was established as a CRAT and does not fit the definition for the other two options. A CRAT, by statutory definition, is a trust

> (A) from which a sum certain (which is not less than 5 percent of the initial net fair market value of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not a [charitable organization] and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,
>
> (B) from which no amount other than the payments described in subparagraph (A) may be paid to or for the use of any person other than [a charitable organization],
>
> (C) following the termination of the payments referred to in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, [a charitable organization] or is to be retained by the trust for such a use.

Id. § 664(d)(1) (West 1986) (amended 1997).[3]

Paragraph "(A)" of the CRAT requirements limits the interest of the non-charitable beneficiaries to a yearly sum certain based on the initial fair market value of the trust's assets. This fixed interest eliminates the impetus for investments that maximize the non-charitable beneficiaries' interests, and, accordingly, prevents the redirection of trust assets away from the charitable remaindermen. As noted by the Tax Court, this requirement also ensures that the trust does not accumulate untaxed wealth for charities, which would sidestep the income distribution requirements for private foundations. *See Atkinson*, 115 T.C. at 32. The CRAT is required to pay the non-charitable annuity from the first year of its existence. Treas. Reg. § 1.664–2(a)(5) (as amended in 2001).[4]

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[3] This statement of the CRAT definition was the one in force when Atkinson established her annuity trust in 1991. In 1997, Congress amended the CRAT definition, *see* I.R.C. § 664(d)(1) (West Supp.2001), but those amendments are not retroactively applicable to the trust at issue in this case.

[4] We defer to administrative regulations as long as they implement a Congressional mandate in a reasonable manner. *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 845, 104 S.Ct. 2778, 2783, 81 L.Ed.2d 694 (1984). As noted by this court in *RJR Nabisco, Inc. v. United States*, 955 F.2d 1457, 1464 (11th Cir.1992):

> The Supreme Court has been particularly deferential in the area of tax laws because it is "not in the business of administering the tax laws of the Nation. Congress has delegated that task to the Secretary of the Treasury, 26 U.S.C. § 7805(a), and regulations promulgated under this authority, if found to 'implement the congressional mandate in some reasonable manner must be upheld.' "*Cartwright*, 411 U.S. at 550, 93 S.Ct. at 1716 (*citing United States v. Correll*, 389 U.S. 299, 307, 88 S.Ct. 445, 449, 19 L.Ed.2d 537 (1967)).

Paragraph "(B)" prohibits any disbursement of trust assets beyond the fixed annuity interests and the charitable remainder, again buttressing the charitable remainder and the correlative deduction. Should the trust leave open the possibility of making other payments beyond the annuity, it is disqualified as a CRAT. Treas. Reg. § 1.664-1(a)(6) (Example 3) (as amended in 2001). Each of these requirements attempts to make the valuation of the charitable remainder at the death of the grantor conform more closely to the actual interest that will one day pass to charity.

To preserve the estate's ability to claim a charitable deduction for a remainder interest in property, the trust must not only be set up as a CRAT, but it must also comply with the CRAT statutory requirements from its formation to the final disposition of the trust's assets. Treas. Reg. § 1.664–1(a)(4) (as amended in 2001). As noted by the IRS in this litigation, "without the limitations TTT, the intent of Congress in enacting [the CRAT rules] could be defeated by the creation of CRATs that have their documents in order but that fail to function as CRATs after their creation." Appellee's Brief, at 32.

C. Atkinson Annuity Trust's Compliance with CRAT Regulations

1. Applicability of CRAT Regulations

The estate argues that the CRAT rules have no application where, as here, none of the non-charitable beneficiaries ever qualified under the terms of the trust. According to the estate, the failure of the non-charitable beneficiaries to qualify means that no inter-

est "passed," within the meaning of § 2055(e)(2)[5], both to these non-charitable beneficiaries and to the charities so as to invoke the CRAT rules. The IRS regulations refute the estate's argument. According to Treas. Reg. § 20.2056(c)–1(a)(5) (as amended in 1994), property interests transferred during the life of the decedent are immediately considered to have "passed" from the decedent to the recipient for purposes of § 2055(e)(2).[6] Though these interests may be contingent, the contingency does not mean that the interests do not immediately "pass" unless the possibility of the contingency occurring is so remote as to be negligible. Treas. Reg. § 20.2055-2(e)(1)(i) (as amended in 2001). The noncharitable beneficiaries each received a property interest, contingent on their acceptance of their

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[5] The relevant text of § 2055(e)(2) reads as follows:

> Where an interest in property (other than an interest described in section 170(f)(3)(B)) passes or has passed from the decedent to a [charitable use or beneficiary], and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a [non-charitable use or beneficiary], no deduction shall be allowed under this section for the interest which passes or has passed to [the charitable use or beneficiary] unless—
>
> > (A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust TTT or a pooled income fund TTT, or
> >
> > (B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

[6] The regulations under § 2055(e)(2) point to corresponding regulations under § 2056(c) for purposes of determining whether an interest has "passed," thus the citation to these regulations in the text.

share of the estate's tax burden, in the trust upon its establishment. The possibility of at least one beneficiary accepting the trust's terms and fulfilling the contingency cannot be said to be remote; therefore, their interests immediately "passed" under § 2055(e)(2) when the trust was established. From that moment on, the trust was required to operate as a CRAT in order to preserve its ability to qualify for a deduction of the charitable remainder.

2. Adherence to Regulations

The documents that establish the Atkinson annuity trust track the CRAT requirements to the letter. However, the Atkinson annuity trust failed to comply with the CRAT rules throughout its existence. Yearly annuity payments to Atkinson were not made during her lifetime. Accordingly, since the CRAT regulations were not scrupulously followed through the life of the trust, a charitable deduction is not appropriate.

The estate complains that this stringent focus on the CRAT rules amount to a denial of a substantial charitable deduction because of what amounts to a "foot fault," or a minor mistake. However, the scheme established by Congress is specifically designed to combat the problems associated with the donation of charitable remainders. In exchange for the significant benefits of allowing a present charitable deduction, even when the actual charitable donation is not to occur until the remainder interest in the property becomes possessory, and in allowing the assets of the trust to grow tax-free, the Code requires adherence to the CRAT rules. It is not sufficient to establish a trust under the CRAT rules, then completely ignore the rules during the trust's administration, thereby defeating the policy interests advanced by Congress in enacting the rules.

Despite the certain charitable donation in this case, the countervailing Congressional concerns surrounding the deductibility of charitable remainders in general counsel strict adherence to the Code, and, barring such adherence, mandate a complete denial of the charitable deduction.[7]

III. CONCLUSION

From our review of the record and the parties' briefs, we find no reversible error. Because the annuity trust did not adhere to the CRAT regulations throughout its existence, the charitable remainder interest does not qualify as a charitable deduction.

AFFIRMED.

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[7] We note that no argument was made by the estate that the trust could be reformed under § 2055(e)(3) to comply with the Code's requirement and, thus, that the estate would be entitled to a charitable deduction. Thus, we express no opinion on that matter.

APPENDIX B

UNITED STATES TAX COURT

No. 20968-97

ESTATE OF MELVINE B. ATKINSON, Deceased,
CHRISTOPHER J. MACQUARRIE, Executor, Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

July 26, 2000, Filed

OPINION

GERBER, JUDGE: Respondent determined a deficiency in petitioner's Federal estate tax in the amount of $2,654,976. The deficiency arose in connection with the operation of a charitable remainder annuity trust (CRAT) created by decedent. The issue for our consideration is whether the trust functioned exclusively as a charitable remainder trust from its creation, thereby remaining a valid trust, so as to qualify the estate for a charitable deduction for the remainder interest.

FINDINGS OF FACT

The stipulation of facts and the exhibits attached thereto are incorporated herein by this reference.

Melvine B. Atkinson (decedent), died on June 7, 1993, at the age of 97, a resident of Miami Beach, Florida. The executor of her estate, Christopher J. MacQuarrie (MacQuarrie), also resided in Florida at the time the petition was filed.

On August 9, 1991, decedent placed stock worth $3,999,974 in trust under a document entitled "Melvine B. Atkinson Charitable Remainder Annuity Trust" (annuity trust) and named MacQuarrie as trustee. At that time, she also created the Melvine B. Atkinson Irrevocable Trust (administrative trust) and placed stock worth $953,012 in that trust. MacQuarrie was named trustee for this second trust as well. On the same day, decedent signed her Last Will and Testament (will), naming MacQuarrie as personal representative.

The annuity trust provided that the trust would pay decedent an annuity equal to 5 percent of the fair market value of the assets of the trust as of the date of its creation, in equal quarterly payments, until her death. At least seven quarterly payments of $49,999.68 ($3,999,974 x 5% / 4), totaling $349,997.76, should have been made to decedent before her death. No payments were actually made from the trust account during decedent's lifetime. The value of the trust was not diminished by the 5-percent payments. MacQuarrie was aware that the trust document and the statutes relating to CRAT's required that a minimum of 5 percent of the initial fair market value be paid out each year, and he was aware that decedent was not withdrawing money from the trust. No funds were ever transferred to decedent from the trust. The amount of $366,334.92, representing the amount due to decedent under the trust terms, was included as an asset of decedent's estate.

Upon decedent's death, the trust document provided that the same 5-percent annuity amount was

to be distributed amongst various named individuals (secondary beneficiaries) but only if those beneficiaries each furnished their share of the funds for payment of Federal estate and State death taxes for which the trustee might be liable upon Atkinson's death. One of those secondary beneficiaries was Mary Birchfield (Birchfield), who had cared for decedent from 1984 until her death.

As trustee, MacQuarrie informed the secondary beneficiaries of their right to receive an annuity under the trust and of the condition that they must pay the related Federal estate and State death taxes. After notifying the secondary beneficiaries of their need to elect to receive, MacQuarrie moved to compel their election. Ultimately, only Birchfield elected to take her share. Birchfield agreed to take the money, but informed MacQuarrie that the decedent had indicated that she would not be liable for her share of the estate taxes and that she possessed a notarized document from decedent to that effect. She informed MacQuarrie that she expected to be given the money without paying any estate tax. After increasingly hostile exchanges, MacQuarrie and a second attorney (who was also evaluating the administration of the estate) decided that it would be in the best interest of the trust to settle Birchfield's claim for the payment of any related taxes. MacQuarrie filed a motion seeking the court's approval of payment out of the administrative trust for any estate taxes related to the amount to be paid to Birchfield pursuant to the annuity trust. The probate judge signed a proposed order to that effect. At that time $667,000, representing the annuity payments due to Birchfield accrued from decedent's death, was set aside for Birchfield. MacQuarrie delayed paying the accrued amount to Birchfield due to concern over a possible estate audit but motioned the court for approval to distribute the funds before a closing letter was obtained. The probate judge ordered

that those funds be distributed to Birchfield, and a payment of $667,000 was made to Birchfield on December 31, 1996. Four additional payments were made to Birchfield towards her 5-percent annuity amount. No Federal estate or State death taxes were paid by Birchfield on the amounts she received. It was subsequently determined that funds from the administrative trust were insufficient to pay both the estate tax attributable to Birchfield's interest and the administration expenses and retirement of decedent's debts. Accordingly, it will be necessary to invade the CRAT to make up the shortfall.

Birchfield died of breast cancer on April 22, 1997. At the time of the estate valuation calculation, MacQuarrie had asked for and received an affidavit from Birchfield's doctor stating that Birchfield had a less than 5-year life expectancy. In accordance with section 7520,[8] the estate valued the charitable remainder interest from the trust considering the annuity payment to Birchfield based on her normal life expectancy. Petitioner now asserts that this calculation had been done incorrectly and that a shorter life expectancy should have been used resulting in a greater charitable deduction for the remainder interest.

Respondent determined that the charitable remainder annuity trust was not a valid CRAT and that no charitable deduction was available to the estate. Respondent also determined that several of the estate expenses were improperly deducted because they had not been paid. Though respondent agrees that several of the deductions are now allowable, respondent continues to maintain that the charitable deduction taken by the estate should be disallowed. Respondent de-

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[8] Unless otherwise indicated, all section references are to the Internal Revenue Code in effect as of the date of decedent's death, and all Rule references are to the Tax Court Rules of Practice and Procedure.

termined that the trust did not continue to function as a charitable remainder annuity trust for two reasons: First, when it failed to pay the required annual amount to decedent during her life and, second, when the trust ostensibly agreed to pay money towards the tax liability on the funds distributed to Mary Birchfield in accordance with the settlement. Petitioner maintains that the estate qualifies for a charitable deduction under section 2055 and that it is entitled to a refund because a greater charitable deduction should have been allowed in light of the revised actuarial values for Birchfield's annuity.

OPINION

The issue before us is whether, in its operation, decedent's charitable remainder annuity trust met the statutory requirements so as to qualify for a charitable deduction. Specifically, we consider whether the trust made the statutorily required payments to decedent during her lifetime and the effect of the trust's obligation to make payments to the secondary beneficiary after decedent's death. If we decide that the trust was operationally qualified, we must then decide the appropriate life expectancy of Mary Birchfield to decide whether petitioner is entitled to a larger charitable deduction. On brief and at trial,[9] respondent maintained that the trust failed to qualify as a CRAT for purposes of sections 2055 and 664 because of actions of the trustee and/or trustor. If the trust is so disqualified, section 2055 precludes the taking of a charitable deduction for the charitable remainder interest.

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[9] At trial, respondent also raised the issue of whether certain expenses of the trust were reasonable. After reviewing the pertinent materials, we found that the reasonability of the fees was a new issue and therefore could not be raised for the first time at trial. Though respondent raises the issue again on brief, we adhere to our earlier ruling.

Section 2055 provides for a deduction from the Federal gross estate of an amount equal to the property passing from a decedent to a charitable organization of the type described in subsection (a) of the section. Subsection (a) includes organizations pursuing religious, charitable, scientific, literary, or educational purposes, or fostering amateur sports competition, or preventing cruelty to children or animals, from which no net earnings inure to a noncharitable private party and which do not participate in political campaigning. *See* sec. 2055(a)(2). However, no deduction shall be allowed if a charity receives a remainder interest in property and if an interest in the same property also passes to an individual or a noncharitable entity, unless the charitable remainder interest is in a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund. *See* sec. 2055(e)(2)(A). The trust established by decedent purports to be a CRAT, and if it were, a gift of trust assets to charity would qualify for the charitable deduction.

Section 664(d)(1) contains the definition of a charitable remainder annuity trust. A trust only qualifies as a CRAT if: (1) It pays out a sum certain, not less than 5 percent of the initial fair market value of the trust assets, annually or more frequently to one or more persons for either the lifetime of such person or a term of years (not more than 20 years); (2) no other payments, besides those described in (1), are paid to or for the use of a person other than an organization described by section 170(c);[10] (3) once the payments described in (1) cease, the remainder interest is transferred to or for the use of an organization described in section 170(c) or is retained by the trust for such a use; and (4) the value of that remainder interest is at

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[10] Sec. 170(c) describes organizations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster amateur sports competition, or for the prevention of cruelty to children or animals.

least 10 percent of the initial fair market value of the trust assets. *See* sec. 664(d)(1). Furthermore, the terms of the trust must meet the statutory requirements, and the trust must operate within those terms from its creation. *See* sec. 1.664-1(a)(4), Income Tax Regs.

FIVE-PERCENT DISTRIBUTION REQUIREMENT

Section 664 provides for a narrow exception to the general disallowance of deductions for charitable remainder interests under section 2055(e)(2)(A). In order to qualify, all section 664 requirements for CRAT's must be met upon creation and must continue to be met throughout the existence of the CRAT. *See* sec. 1.664- 1(a)(4), Income Tax Regs. One of those requirements is that a minimum payment of 5 percent of the initial fair market value of the trust's assets be distributed each year to the noncharitable beneficiary. Petitioner argues that this distribution requirement should be set aside or ignored because it only serves to decrease the charitable contribution and because decedent had no need for the distribution. One of the primary reasons for sections 2055 and 664 was to ensure that any amount set aside for charity was not diminished by payments to noncharitable beneficiaries.

The trust here, however, provides for four potential secondary beneficiaries who could have survived decedent and elected to receive payments that could have reduced the amount due to charity. An expressed focus of Congress in enacting the 5-percent distribution requirement was to prevent a charitable remainder trust from being used to circumvent the current income distribution requirements imposed on private foundations. *See* S. Rept. 91-552 (1969), 1969-3 C.B. 423, 481. If there were no such requirement, a charitable remainder trust could be used to accumulate trust income tax-free, while a private foundation

would remain limited in the amount of income it might accumulate. *See Id.*

Though the terms of the annuity trust met the letter of the statutory requirement providing for distributions equal to 5 percent annually, the trust did not operate in accordance with those terms. Petitioner bears the burden of proof in this matter, including the burden of substantiation. *See* Rule 142(a). Petitioner has presented no persuasive evidence that checks for the 5 percent annuity ever existed or were ever sent to decedent. Purportedly, MacQuarrie remitted checks to decedent that were not cashed. However, there is no record of canceled or uncanceled checks, nor did petitioner present any evidence demonstrating a gap in the check sequence. Though MacQuarrie testified that he made copies of checks written on the trust account, no such copies were presented to evidence these alleged payments. On the other hand, we do have evidence that no payments were ever actually consummated before decedent's death. The trust was never diminished by any payments during decedent's life. Because the trust value was undiminished and no transfer of funds occurred, operationally the trust did not meet the express 5-percent requirement of the statute and cannot qualify for treatment as a charitable remainder trust. Accordingly, section 2055 applies, and the estate is not entitled to a deduction for the bequest of a charitable split-interest.[11]

Petitioner alternatively argues that the trust should not be disqualified as a CRAT for the lack of payments to decedent because the failure of action took place during the trustor's lifetime. Petitioner argues that section 1.664-1(a)(5), Income Tax Regs., al-

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[11] The additional failure of the trust attributable to the payments to the secondary beneficiary, when coupled with the more technical "5 percent rule" makes respondent's position that the trust failed operationally more compelling. *See infra* pp. 14-15.

lows for CRAT's created inter vivos to ignore all of the requirements established by section 664 until the moment of death.[12] Petitioner argues that, under this provision of the regulation, the trust did not come into being until the date of decedent's death, and therefore no prior violation of the CRAT requirements could disqualify the trust. Petitioner's position overlooks that this provision of the regulation is inapplicable to the trust involved here -- an irrevocable trust established and funded by decedent during her lifetime. The application of this provision of the regulation, as reflected in its terms and illustrated by the accompanying examples, *see* sec. 1.664-1(a)(6), Income Tax Regs., is confined to testamentary trusts funded for the first time after the grantor's death. In the present case, the trust is deemed created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust. *See* sec. 1.664-1(a)(4), Income Tax Regs. Here, decedent irrevocably relinquished ownership of the trust assets during her lifetime when she signed the trust documents stating that she was transferring the property to the trust on August 9, 1991. The CRAT was created on

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[12] Sec. 1.664-1(a)(5), Income Tax Regs., provides:

> (5) Rules applicable to testamentary transfers –
>
> > (i) Deferral of annuity or unitrust amount. Notwithstanding subparagraph (4) of this paragraph and sections 1.664-2 and 1.664-3, for purposes of sections 2055 and 2016 a charitable remainder trust shall be deemed created at the date of death of the decedent (even though the trust is not funded until the end of a reasonable period of administration or settlement) if the obligation to pay the annuity or unitrust amount with respect to the property passing in trust at the death of the decedent begins as of the date of death of the decedent, even though the requirement to pay such amount is deferred in accordance with the rules provided in this subparagraph.

that date and was to function as a CRAT from that day forward, as required in the regulations. *See id.* The regulation providing for a deemed creation date upon the death of a trustor does not apply to an operating inter vivos trust that is to continue after the death of the grantor.

Though only mentioned in passing by petitioner, we also note that reformation of the trust pursuant to section 2055(e)(3) would not be an available remedy to petitioner. Section 2055(e)(3) provides that a trust or will may be reformed if it was improperly created and yet conforms to the CRAT requirements. The definition of "qualified reformation" demonstrates that the reformation is meant to address only those problems arising in the documentation of the trust. Section 2055(e)(3)(B) defines qualified reformation as "a change of governing instrument by reformation, amendment, construction, or otherwise". The legislative history indicates that reformation under section 2055 was created to address problems in trust creation as follows: "The bill provides a permanent rule permitting reformation of governing instruments of charitable split-interest trusts which do not meet the requirements of the 1969 Act rules." Staff of the Senate Comm. on Finance, 98th Cong. 2d Sess., Explanation Of Provisions Approved By The Committee On March 21, 1984, S. Prt. 98-169, Vol. I at 732 (Comm. Print 1984). Here the trust was validly formulated, and its terms were within the statutory threshold requirements. Accordingly, reformation is not needed to "rewrite" incorrect terms. The operational failure cannot be corrected by reformation. Therefore, the concept of reformation has no application here.

PAYMENTS TO BIRCHFIELD

In addition to the failure in operation that occurred when no payments were made to decedent in accordance with the trust terms, the trust is disquali-

fied from being a CRAT because it will be necessary to invade the trust to satisfy the obligations of the estate, which include the estate and death taxes apportionable to Mary Birchfield's beneficial interest in the trust. The estate bears the responsibility for those tax payments. As discussed earlier, the funds in the administrative trust are not sufficient to pay decedent's debts, the administration expenses, and estate and death taxes. The shortfall will have to come out of the trust corpus. Pursuant to section 664(d)(1)(B), no amount of the trust, other than the annuity, may be paid to or for the use of any person other than an organization described in section 170(c). Because the trust corpus will be invaded to pay expenses or debts of the estate, including estate taxes, a substantial part of the trust funds may be diverted from the charitable remainder. This is an additional reason for concluding that the trust failed to function exclusively as a CRAT from the date of its creation. *See* sec. 1.664-1(a)(6), Example (3), Income Tax Regs. (reservation of power to pay grantor's debts precludes qualification as CRAT); *see also* Rev. Rul. 82-128, 1982-2 C.B. 71 (ruling that "a trust does not qualify as a charitable remainder trust and no deduction is allowable under sections 170 and 2522 of the Code if it is possible that federal estate and state death taxes may be payable from the trust assets").

We need not address the valuation of Birchfield's life interest and any correlated value of the remainder interest. At the time the payments were made out of the trusts to and on behalf of Birchfield, the estate did not qualify for the exception to section 2055(e)(2)(A) and thus was not entitled to any charitable deduction for the remainder interest in the trust.

On brief, respondent states that several deductions previously disallowed will now be allowed, although the deductions were not identified. At trial, respondent questioned whether certain expenses were

properly deducted due to uncertainty about whether they had been actually paid. Testimony about payment of the expense was received in evidence. On brief, respondent did not address the issue of payment, and, accordingly, we consider this issue to have been waived or conceded. *See Stringer v. Commissioner*, 84 T.C. 693, 708 (1985), *affd.* without published opinion 789 F.2d 917 (4th Cir. 1986).

To reflect the foregoing,

Decision will be entered under Rule 155.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-16536

ESTATE OF MELVINE B. ATKINSON, Deceased,
CHRISTOPHER J. MACQUARRIE, Executor,
Petitioners-Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee

On Appeal from a Decision of the
United States Tax Court

Filed Feb. 3, 2003

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before: BIRCH and COX, Circuit Judges, and GEORGE,* District Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having

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* Honorable Lloyd D. George, U.S. District Judge for the District of Nevada, sitting by designation.

requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

APPENDIX D

STATUTORY APPENDIX

1. 26 U.S.C. 664 provides, in relevant part:

(b) Character of distributions.

Amounts distributed by a charitable remainder annuity trust or by a charitable remainder unitrust shall be considered as having the following characteristics in the hands of a beneficiary to whom is paid the annuity described in subsection (d)(1)(A) or the payment described in subsection (d)(2)(A):

(1) First, as amounts of income (other than gains, and amounts treated as gains, from the sale or other disposition of capital assets) includible in gross income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years;

(2) Second, as a capital gain to the extent of the capital gain of the trust for the year and the undistributed capital gain of the trust for prior years;

(3) Third, as other income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years; and

(4) Fourth, as a distribution of trust corpus.

* * * * *

(c) Exemption from income taxes. A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year,

not be subject to any tax imposed by this subtitle, unless such trust, for such year, has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust).

(d) Definitions.

(1) Charitable remainder annuity trust. For purposes of this section, a charitable remainder annuity trust is a trust--

(A) from which a sum certain (which is not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in subparagraph (A) and other than qualified gratuitous transfers described in subparagraph (C) may be paid to or for the use of any person other than an organization described in section 170(c),

(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to

an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)), and

(D) the value (determined under section 7520) of such remainder interest is at least 10 percent of the initial net fair market value of all property placed in the trust.

* * * * *

(e) Valuation for purposes of charitable contribution. For purposes of determining the amount of any charitable contribution, the remainder interest of a charitable remainder annuity trust or charitable remainder unitrust shall be computed on the basis that an amount equal to 5 percent of the net fair market value of its assets (or a greater amount, if required under the terms of the trust instrument) is to be distributed each year.

* * * * *

2. 26 U.S.C. 2001 provides, in relevant part:

(a) Imposition.

A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

(b) Computation of tax. The tax imposed by this section shall be the amount equal to the excess (if any) of--

(1) a tentative tax computed under subsection (c) on the sum of--

(A) the amount of the taxable estate, and

(B) the amount of the adjusted taxable gifts, over

(2) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the provisions of subsection (c) (as in effect at the decedent's death) had been applicable at the time of such gifts.

For purposes of paragraph (1)(B), the term "adjusted taxable gifts" means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

* * * * *

3. 26 U.S.C. 2036 provides, in relevant part:

(a) General rule.

(a) General rule. The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death--

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who

shall possess or enjoy the property or the income therefrom.

* * * * *

4. 26 U.S.C. 2055 provides, in relevant part:

(a) In general.

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers—

* * * * *

(2) to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

* * * * *

For purposes of this subsection, the complete termination before the date prescribed for the

filing of the estate tax return of a power to consume, invade, or appropriate property for the benefit of an individual before such power has been exercised by reason of the death of such individual or for any other reason shall be considered and deemed to be a qualified disclaimer with the same full force and effect as though he had filed such qualified disclaimer.

* * * * *

(e) Disallowance of deductions in certain cases.

* * * * *

(2) Where an interest in property (other than an interest described in section 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in subsection (a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in subsection (a), no deduction shall be allowed under this section for the interest which passes or has passed to the person, or for the use, described in subsection (a) unless--

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

* * * * *

(3) Reformations to comply with paragraph (2).

(A) In general. A deduction shall be allowed under subsection (a) in respect of any qualified reformation.

* * * * *

(F) Special rule where income beneficiary dies. If (by reason of the death of any individual, or by termination or distribution of a trust in accordance with the terms of the trust instrument) by the due date for filing the estate tax return (including any extension thereof) a reformable interest is in a wholly charitable trust or passes directly to a person or for a use described in subsection (a), a deduction shall be allowed for such reformable interest as if it had met the requirements of paragraph (2) on the date of the decedent's death. For purposes of the preceding sentence, the term "wholly charitable trust" means a charitable trust which, upon the allowance of a deduction, would be described in section 4947(a)(1).

* * * * *

APPENDIX E

UNITED STATES TAX COURT

ESTATE OF MELVINE B. ATKINSON, DECEASED, CHRISTOPHER J. MacQUARRIE, EXECUTOR,	)
Petitioner,	)
v.	)
COMMISSIONER OF INTERNAL REVENUE SERVICE,	)
Respondent.	)

DOCKET NO. 20968-97
JUDGE GERBER

MOTION IN LIMINE BY PETITIONER REGARDING VAGUE NOTICE, BURDEN OF PROOF AND FAILURE TO RAISE NEW ISSUES

PETITIONER HEREBY MOVES, pursuant to Rules 36(b) and 142(a) of the Rules of Practice and Procedure of the United States Tax Court ("Tax Court Rules") that the Court enter an Order determining that:

(i) The notice of deficiency ("Notice") fails to "describe the basis for" the *carte blanche* disallowance of the charitable contribution deduction;

(ii) The vagueness of the Notice is compounded by Respondent's violation of Tax Court Rule 36(b) in the abject failure of his Answer to

"advise the Petitioner and the Court fully of the nature of the defense ... [and] contain a clear and concise statement of every ground, together with the facts in support thereof on which the Commissioner relies and has the burden of proof";

(iii) Those failures are further compounded by Respondent's surprise attempt to inject for the first time in his Trial Memorandum a factually and legally complex new issue requiring proof of six to eight year old pre-death documents which are not readily available – which surprise unfairly prejudices Petitioner;

(iv) Respondent's failure to properly or timely raise any basis for his disallowance precludes consideration of any new matter; and

(v) At a minimum, Respondent bears the burden of proof as to those matters which were originally communicated though not described in the Notice.

IN SUPPORT THEREOF, Petitioner respectfully shows unto the Court:

(i) This action is scheduled for trial before the Honorable Joel Gerber commencing on May 5, 1999 in Tampa, Florida.

(ii) The Notice is the stereotypical "say nothing notice" that was common before Congress con-

demned such notices in adopting §7522(a) as part of the Taxpayer Bills of Rights. After almost one year in audit, Respondent's Notice conveys no real information other than the Respondent does not like the charitable contribution deduction[1] identified on the return:

> (g) It is determined that the gross estate should not be reduced by the $3,894,535 reported at Item 1 of Schedule O as the value of the Melvine B. Atkinson Charitable Remainder Trust because it has not been established that the estate is entitled to a charitable deduction in any amount. Accordingly, the reported taxable estate as adjusted by the Atlanta Service Center is increased $3,894,535.

(iii) No factual basis nor legal basis is identified – much less described. This non-determination is all the more puzzling since Respondent now admits the Irrevocable Charitable Trust was properly structured. Resp. Tr. Memo., p. 5.

(iv) I.R.C. §7522(a) requires in mandatory terms that the Notice "shall *describe the basis* for ... the tax due, interest, additional amounts ... included in the notice." As this Court held in a reviewed opinion issued April 1, 1999:

> Congress enacted section 7522 with the expectation that the IRS would "make every effort to improve the clarity of all notices * * * that are sent to taxpayers." H. Conf. Rept. 100-1104, at 219 (1988), 1988-3 C.B. 473, 709.

---

[1] The Notice is specific with respect to disallowance of the administrative expenses: they were disallowed "because such fees have not been paid" – payment that has now been confirmed by Respondent.

* * *

> Section 7522, which was enacted after the *Abatti* decision, requires that a notice of deficiency "describe the basis" for the tax deficiency. [FN20]. Section 7522 makes no exception for a basis that is "not inconsistent" with the language in the notice of deficiency. Indeed, were such an exception available, the Commissioner would be free to raise new theories that would require different evidence so long as the new theories were not inconsistent with the language in the notice of deficiency. Such a result would significantly dilute the legislative mandate of section 7522.

Shea v. Commissioner, 112 T.C. ___ No. 14 (Reviewed; 1999).

(v) The danger raised by vague notices is best illustrated by Respondent's attempt to insinuate a complex factual and legal issue for the first time in his Trial Memorandum which was received by Petitioner ten days before the calendar call. Recognizing the fallacy of his original position, Respondent suggests for the first time at pages 5 and 6 of his Memorandum that he may rely on [never before alleged] aspects of the pre-death distributions to Mrs. Atkinson. He then takes amazing liberties with his own regulation – reversing the language relating to permissible distributions after the close of the taxable year and omitting the single most important word regarding timely payment in light of Mrs. Atkinson's stroke. ("For purposes of the preceding sentence, a reasonable time will not *ordinarily* extend beyond the date by which the trustee is required to file Form 1041-B"). Treas. Reg. §1.664-2(a)(1).

(vi) If properly raised, this new matter would require resurrection on the eve of trial of checks, financial data, and witnesses relating to pre-death distributions six to eight years ago. Again in the words of this Court in *Shea*:

> We have previously held that new matter is raised when the basis or theory on which the Commissioner relies was not stated or described in the notice of deficiency and the new theory or basis requires the presentation of different evidence. *Wayne Bolt & Nut Co. v. Commissioner*, 93 T.C. at 507. This rule for determining whether a new matter has been raised by the Commissioner is consistent with, and supported by, the statutory requirement that the notice of deficiency "describe the basis" for the Commissioner's determination. This rule also provides a reasonable method for enforcing the requirements of section 7522.
>
> We, therefore, hold that where a notice of deficiency fails to describe the basis on which the Commissioner relies to support a deficiency determination and that basis requires the presentation of evidence that is different than that which would be necessary to resolve the determinations that were described in the notice of deficiency, the Commissioner will bear the burden of proof regarding the new basis. To hold otherwise would ignore the mandate of section 7522 and Rule 142(a).

Hence, Respondent would bear the burden of proof if this matter were properly pled. Tax Court Rule 142.

(vii) Respondent never pled nor sought leave to plead this new issue – or, for that matter, any factual or legal basis relating to the charitable contribution deduction.[2] Consequently, Respondent has violated the requirements in Tax Court Rule 36(b) that an answer shall "advise the Petitioner and the Court fully of the nature of the defense ... [and] contain a clear and concise statement of every ground, together with the facts in support thereof on which the Commissioner relies and has the burden of proof."

(viii) Therefore, this new matter has never been properly raised. Indeed, because it attempts to inject such ancient matters at such a late date, it constitutes a surprise that would horribly prejudice Petitioner. Documents have been lost, memories have faded, and witnesses have died. As such, this new matter cannot be injected at this stage regardless of whether it is deemed to constitute a new issue or a new theory. *See, e.g., Leahy v. Commissioner,* 87 T.C. 56, 64-65 (1986); *Estate of Seligman v. Commissioner,* 84 T.C. 191, 198-199 (1985); *Estate of Horvath v. Commissioner,* 59 T.C. 551, 555-556 (1973).

(ix) In fairness, no surprise arises as to any evidence Respondent may offer in support of his circular retroactive reformation argument based on his 17 year old revenue ruling that no court has ever endorsed. That has been discussed previously, though it is not "described" in the notice and therefore not entitled to the presumption of correctness. *Cf., Straight v. Commissioner,* T.C. Memo 1997-569 (Respondent conceded that placing the burden of proof on Respondent is proper where the notice violates §7522).

(x) Respondent objects to the granting of this Motion.

---

[2] The Tax Court Rules are very clear: only a petition, an answer, and a reply constitute pleadings. Tax Court Rule 30.

WHEREFORE, it is prayed that the Court grant this Motion and recognize that the Notice violates §7522(a), the Answer violates Tax Court Rule 36(b), injection of new matters at this stage would be prejudicial, and Respondent bears the burden of proof as to those matters that have been long considered but are not described in the Notice.

Respectfully submitted,

DAVID D. AUGHTRY
Tax Court Bar No. AD0165
CHAMBERLAIN, HRDLICKA, WHITE,
WILLIAMS & MARTIN
191 Peachtree Street, N.E.
Ninth Floor
Atlanta, Georgia 30303
Telephone: (404)659-1410

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing **MOTION IN LIMINE REGARDING VAGUE NOTICE, BURDEN OF PROOF AND FAILURE TO RAISE NEW ISSUES** has been made by hand delivery thereof, addressed to:

Francis C. Mucciolo
Senior Attorney
Box 35027, Federal Building -
Suite 564- Stop C
400 West Bay Street
Jacksonville, Florida 32202

This ___ day of _____, 1999.

_____
DAVID D. AUGHTRY
Tax Court Bar No. AD0165

CHAMBERLAIN, HRDLICKA, WHITE,
WILLIAMS & MARTIN
191 Peachtree Street, N.E.
Ninth Floor
Atlanta, Georgia 30303
Telephone: (404) 659-1410

APPENDIX F

EXHIBIT A

Estate of Melvine B. Atkinson, Deceased, Christopher J. MacQuarrie, Executor

v.

Commissioner of Internal Revenue

No. 01-16536-FF

***See* Schedule B, Part II of Mrs. Atkinson's Income Tax Returns (Form 1040) for 1991-1993 reporting the uncashed checks (distributions of dividend income) from the Irrevocable Charitable Trust.**

COPY

Form 1040 Department of the Treasury—Internal Revenue Service
U.S. Individual Income Tax Return 1991

For the year Jan.–Dec. 31, 1991, or other tax year beginning , 1991, ending , 19 OMB No. 1545-0074

Label (Use IRS label. Otherwise, please print or type.)
MELVINE B. ATKINSON
2303 S.E. 17TH STREET #201
OCALA, FL 32671

Your social security number: 263-18-1569
Spouse's social security number:
For Privacy Act and Paperwork Reduction Act Notice, see instructions.

Presidential Election Campaign
Do you want $1 to go to this fund? Yes [ ] No [X]
If joint return, does your spouse want $1 to go to this fund? Yes [ ] No [ ]
Note: Checking "Yes" will not change your tax or reduce your refund.

Filing Status (Check only one box.)
1 [X] Single
2 [ ] Married filing joint return (even if only one had income)
3 [ ] Married filing separate return. Enter spouse's social security no. above and full name here.
4 [ ] Head of household (with qualifying person). (See page 12.) If the qualifying person is a child but not your dependent, enter this child's name here.
5 [ ] Qualifying widow(er) with dependent child (year spouse died). (See page 12.)

Exemptions (See page 12.)
6a [X] Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a. But be sure to check the box on line 33b on page 2. No. of boxes checked on 6a and 6b: 1
b [ ] Spouse. No. of your children on 6c who:
c Dependents: (1) Name (first, initial, and last name) | (2) Check if under age 1 | (3) If age 1 or older, dependent's social security number | (4) Dependent's relationship to you | (5) No. of months lived in your home in 1991
• lived with you
• didn't live with you due to divorce or separation (see page 14)
No. of other dependents on 6c
If more than six dependents, see page 13.
d If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here [ ]
Add numbers entered on lines above: 1
e Total number of exemptions claimed.

Income (Attach Copy B of your Forms W-2, W-2G, and 1099-R here. If you do not have a W-2, see page 10. Attach check or money order on top of any Forms W-2, W-2G, or 1099-R.)

7	Wages, salaries, tips, etc. (attach Form(s) W-2)	7	
8a	Taxable interest income (also attach Schedule B if over $400)	8a	18,053
b	Tax-exempt interest income (see page 19). DON'T include on line 8a. 8b		
9	Dividend income (also attach Schedule B if over $400)	9	198,577
10	Taxable refunds of state and local income taxes, if any, from worksheet on page 18	10	
11	Alimony received	11	
12	Business income or (loss) (attach Schedule C)	12	
13	Capital gain or (loss) (attach Schedule D)	13	531,945
14	Capital gain distributions not reported on line 13 (see page 17)	14	
15	Other gains or (losses) (attach Form 4797)	15	
16a	Total IRA distributions 16a	b Taxable amount	16b
17a	Total pensions and annuities 17a	b Taxable amount	17b
18	Rents, royalties, partnerships, estates, trusts, etc. (attach Schedule E)	18	
19	Farm income or (loss) (attach Schedule F)	19	
20	Unemployment compensation (insurance) (see page 18)	20	
21a	Social security benefits 21a 3,923	b Taxable amount	21b 1,962
22	Other income (list type and amount—see page 18)	22	
23	Add the amounts shown in the far right column for lines 7 through 22. This is your total income	23	750,537

Adjustments to Income (See page 19.)

24a	Your IRA deduction, from applicable worksheet on page 20 or 21	24a	
b	Spouse's IRA deduction, from applicable worksheet on page 20 or 21	24b	
25	One-half of self-employment tax (see page 21)	25	
26	Self-employed health insurance deduction, from worksheet on page 22	26	
27	Keogh retirement plan and self-employed SEP deduction	27	
28	Penalty on early withdrawal of savings	28	
29	Alimony paid. Recipient's SSN	29	
30	Add lines 24a through 29.	30	

Adjusted Gross Income

31	Subtract line 30 from line 23. This is your adjusted gross income. If this amount is less than $21,250 and a child lived with you, see page 40 to find out if you can claim the "Earned Income Credit" on line 59.	31	750,537

Form 1040 (1991)

MELVINE B. ATKINSON — 263-18-1569 — Page 2

Tax Computation	32	Amount from line 31 (adjusted gross income)		32	750,537
	33a	Check if: [X] You were 65 or older, [ ] Blind; [ ] Spouse was 65 or older, [ ] Blind. Add the number of boxes checked above and enter the total here ▶	1		
	b	If your parent (or someone else) can claim you as a dependent, check here ▶ 33b [ ]			
If you want the IRS to figure your tax, see page 24.	c	If you are married filing a separate return and your spouse itemizes deductions, or you are a dual-status alien, see page 23 and check here ▶ 33c [ ]			
	34	Enter the larger of your: Itemized deductions (from Schedule A, line 28), OR Standard deductions (shown below for your filing status). Caution: If you checked any box on line 33a or b, go to page 23 to find your standard deduction. If you checked box 33c, your standard deduction is zero. • Single—$3,400 • Head of household—$5,000 • Married filing jointly or Qualifying widow(er)—$5,700 • Married filing separately—$2,850		34	218,285
	35	Subtract line 34 from line 32		35	532,252
	36	If line 32 is $75,000 or less, multiply $2,150 by the total number of exemptions claimed on line 6e. If line 32 is over $75,000, see page 24 for the amount to enter		36	
	37	Taxable income. Subtract line 36 from line 35. (If line 36 is more than line 35, enter -0-.)		37	532,252
	38	Enter tax. Check if from a [ ] Tax Table, b [ ] Tax Rate Schedules, c [X] Schedule D, or d [ ] Form 8615 (see page 24). (Amount, if any, from Form(s) 8814 ▶ e).		38	146,393
	39	Additional taxes (see page 24). Check if from a [ ] Form 4970 b [ ] Form 4972		39	
	40	Add lines 38 and 39 ▶		40	146,393
Credits (See page 25.)	41	Credit for child and dependent care expenses (attach Form 2441)	41		
	42	Credit for the elderly or the disabled (attach Schedule R)	42		
	43	Foreign tax credit (attach Form 1116)	43		
	44	Other credits (see page 25). Check if from a [ ] Form 3800 b [ ] Form 8396 c [ ] Form 8801 d [ ] Form (specify)	44		
	45	Add lines 41 through 44		45	
	46	Subtract line 45 from line 40 ▶		46	146,393
Other Taxes	47	Self-employment tax (attach Schedule SE)		47	
	48	Alternative minimum tax (attach Form 6251)		48	
	49	Recapture taxes (see page 26). Check if from a [ ] Form 4255 b [ ] Form 8611 c [ ] Form 8828		49	
	50	Social security and Medicare tax on tip income not reported to employer (attach Form 4137)		50	
	51	Tax on an IRA or a qualified retirement plan (attach Form 5329)		51	
	52	Advance earned income credit payments from Form W-2		52	
	53	Add lines 46 through 52. Total tax ▶		53	146,393
Payments Attach Forms W-2, W-2G, and 1099-R to front.	54	Federal income tax withheld (if any is from Form(s) 1099, check ▶ [ ])	54		
	55	1991 estimated tax payments and amount applied from 1990 return	55	56,400	
	56	Earned income credit (attach Schedule EIC)	56		
	57	Amount paid with Form 4868 (extension request)	57	138,000	
	58	Excess social security, Medicare, and RRTA tax withheld (see page 27)	58		
	59	Other payments (see page 27). Check if from a [ ] Form 2439 b [ ] Form 4136	59		
	60	Add lines 54 through 59. Total payments ▶		60	194,400
Refund or Amount You Owe	61	If line 60 is more than line 53, subtract line 53 from line 60. This is the amount you OVERPAID ▶		61	48,007
	62	Amount of line 61 to be REFUNDED TO YOU ▶		62	8,007
	63	Amount of line 61 to be APPLIED TO YOUR 1992 ESTIMATED TAX ▶	40,000		
	64	If line 53 is more than line 60, subtract line 60 from line 53. This is the AMOUNT YOU OWE. Attach check or money order for full amount payable to "Internal Revenue Service." Write your name, address, social security number, daytime phone number, and "1991 Form 1040" on it ▶		64	
	65	Estimated tax penalty (see page 28). Also include on line 64 ▶		65	

Sign Here — Keep a copy of this return for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature — Date — Your occupation

Spouse's signature (if joint return, BOTH must sign) — Date — Spouse's occupation

Preparer's signature — Date — Check if self-employed [ ] — Preparer's social security no. 262-69-5212

Paid Preparer's Use Only

Firm's name (or yours if self-employed) and address: DUGGAN, JOINER, BIRKENMEYER, STAFFORD & FURMAN, P.A., CPA'S, 334 N.W. THIRD AVENUE, OCALA, FLORIDA 32670 — E.I. No. 59-1349759

05710AKS 9/30/92

SCHEDULES A&B (Form 1040)
Department of the Treasury
Internal Revenue Service

Schedule A—Itemized Deductions

(Schedule B is on back)

▶ Attach to Form 1040. ▶ See instructions for Schedules A and B (Form 1040).

OMB No. 1545-0074

1991

Attachment Sequence No. 07

Name(s) shown on Form 1040

MELVINE B. ATKINSON

Your social security number

263-18-1569

Medical and Dental Expenses		Caution: Do not include expenses reimbursed or paid by others.				
	1	Medical and dental expenses. (See page 38.)	1			
	2	Enter amount from Form 1040, line 32. 2				
	3	Multiply line 2 above by 7.5% (.075)	3			
	4	Subtract line 3 from line 1. Enter the result. If less than zero, enter -0-			4	
Taxes You Paid (See page 39.)	5	State and local income taxes	5			
	6	Real estate taxes	6	5,121		
	7	Other taxes. ▶ SEE ATTACHED	7	6,519		
	8	Add lines 5 through 7. Enter the total			8	11,640
Interest You Paid (See page 39.) Note: Personal interest is no longer deductible.	9a	Home mortgage interest and points reported to you on Form 1098	9a			
	b	Home mortgage interest not reported to you on Form 1098. (If paid to an individual, show that person's name and address.) ▶	9b			
	10	Points not reported to you on Form 1098. (See instructions for special rules.)	10			
	11	Investment interest. (See page 40.)	11			
	12	Add lines 9a through 11. Enter the total			12	
Gifts to Charity (See page 40.)		Caution: If you made a charitable contribution and received a benefit in return, see page 40.				
	13	Contributions by cash or check LIMITED BY AGI	13			
	14	Other than cash or check. (You MUST attach Form 8283 if over $500.)	14			
	15	Carryover from prior year	15			
	16	Add lines 13 through 15. Enter the total			16	226,161
Casualty and Theft Losses	17	Casualty or theft loss(es) (attach Form 4684). (See page 40.)			17	
Moving Expenses	18	Moving expenses (attach Form 3903 or 3903F). (See page 41.)			18	
Job Expenses and Most Other Miscellaneous Deductions (See page 41 for expenses to deduct here.)	19	Unreimbursed employee expenses—job travel, union dues, job education, etc. (You MUST attach Form 2106 if required. See instructions.) ▶	19			
	20	Other expenses (investment, tax preparation, safe deposit box, etc.). List type and amount ▶	20			
	21	Add lines 19 and 20	21			
	22	Enter amount from Form 1040, line 32. 22				
	23	Multiply line 22 above by 2% (.02)	23			
	24	Subtract line 23 from line 21. Enter the result. If less than zero, enter -0-			24	
Other Miscellaneous Deductions	25	Other (from list on page 41 of instructions). List type and amount ▶			25	
Total Itemized Deductions	26	* If the amount on Form 1040, line 32, is $100,000 or less ($50,000 or less if married filing separately), add lines 4, 8, 12, 16, 17, 18, 24, and 25. Enter the total here. * If the amount on Form 1040, line 32, is more than $100,000 (more than $50,000 if married filing separately), see page 42 for the amount to enter.			26	218,285
		Caution: Be sure to enter on Form 1040, line 34, the LARGER of the amount on line 26 above or your standard deduction.				

MELVINE B. ATKINSON 263-18-1569

SCHEDULE A - ITEMIZED DEDUCTIONS SUPPORTING SCHEDULE - 1991

CONTRIBUTIONS

RECIPIENT	50 PCT.	30 PCT CAP. GAIN	30 PCT OTHER	20 PCT.	NON CASH	TOTAL
COVENANT PRESB. CHURCH	1,000					
SEE FORM 8283		1,910,796			X	
SEE FORM 8283		995,000			X	
TOTAL	1,000	2,905,796				2,906,796
CARRYOVER		2,680,635				2,680,635
ALLOWABLE	1,000	225,161				
ALLOWABLE CONTRIBUTIONS TO SCH. A, LINE 16						226,161

OTHER TAXES

DESCRIPTION	
PERSONAL PROPERTY	20
FLA. INTANGIBLE	6,499
TAL TO SCH. A, LINE 7	6,519

STATEMENT A

Schedules A&B (Form 1040) 1991 — OMB No. 1545-0074 — Page 2

Name(s) shown on Form 1040. (Do not enter name and social security number if shown on other side.) — Your social security number

MELVINE B. ATKINSON — 263-18-1569

Schedule B—Interest and Dividend Income

Attachment Sequence No. 08

Part I Interest Income (See pages 15 and 43.)

If you received more than $400 in taxable interest income, or you are claiming the exclusion of interest from series EE U.S. savings bonds issued after 1989 (see page 43), you must complete Part I. List ALL interest received in Part I. If you received more than $400 in taxable interest income, you must also complete Part III. If you received, as a nominee, interest that actually belongs to another person, or you received or paid accrued interest on securities transferred between interest payment dates, see page 43.

Note: If you received a Form 1099-INT, Form 1099-OID, or substitute statement, from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

Interest Income		Amount
1 Interest income. (List name of payer—include on this line any interest income from series EE U.S. savings bonds issued after 1989 and any interest from seller-financed mortgages. See instructions and list this interest first.) ▶		
SUN BANK	1	16,596
FIRST UNION	1	1,457
2 Add the amounts on line 1	2	18,053
3 Enter the excludable savings bond interest, if any, from Form 8815, line 14. Attach Form 8815 to Form 1040	3	
4 Subtract line 3 from line 2. Enter the result here and on Form 1040, line 8a ▶	4	18,053

Part II Dividend Income (See page 19 and 43.)

If you received more than $400 in gross dividends and/or other distributions on stock, you must complete Parts II and III. If you received, as a nominee, dividends that actually belong to another person, see page 43.

Note: If you received a Form 1099-DIV, or substitute statement, from a brokerage firm, list the firm's name as the payer and enter the total dividends shown on that form.

Dividend Income		Amount
5 Dividend income. (List name of payer—include on this line capital gain distributions, nontaxable distributions, etc.) ▶		
AMERICAN HOME PROD	5	49,680
AMERITECH	5	2,790
AMOCO	5	16,720
AT&T	5	3,614
BELL ATLANTIC	5	2,701
BELLSOUTH	5	3,366
CHEVRON	5	3,104
COCA-COLA CO.	5	4,608
CYPRUS MINERALS	5	684
E.I. DUPONT	5	3,624
EXXON	5	7,268
SEE ATTACHED	5	100,418
6 Add the amounts on line 5	6	198,577
7 Capital gain distributions. Enter here and on Schedule D*	7	
8 Nontaxable distributions. (See the inst. for Form 1040, line 9.)	8	
9 Add lines 7 and 8	9	
10 Subtract line 9 from line 6. Enter the result here and on Form 1040, line 9 ▶	10	198,577

*If you received capital gain distributions but do not need Schedule D to report any other gains or losses, see the instructions for Form 1040, lines 13 and 14.

Part III Foreign Accounts and Foreign Trusts (See page 43.)

If you received more than $400 of interest or dividends, OR if you had a foreign account or were a grantor of, or a transferor to, a foreign trust, you must answer both questions in Part III.

	Yes	No
11a At any time during 1991, did you have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? (See page 43 for exceptions and filing requirements for Form TD F 90-22.1.)		X
b If "Yes," enter the name of the foreign country ▶		
12 Were you the grantor of, or transferor to, a foreign trust that existed during 1991, whether or not you have any beneficial interest in it? If "Yes," you may have to file Form 3520, 3520-A, or 926		X

For Paperwork Reduction Act Notice, see Form 1040 instructions. — Schedules A&B (Form 1040) 1991

MELVINE B. ATKINSON 263-18-1569

SCHEDULE B - INTEREST AND DIVIDEND SUPPORTING SCHEDULE - 1991

DIVIDEND INCOME

PAYER		AMOUNT
MIT	T	410
NORFOLK SO RAILWAY	T	2,730
NYNEX	T	2,497
PACIFIC TELESIS	T	2,300
SEARS,ROEBUCK & CO	T	3,672
SOUTHWESTERN BELL	T	2,310
TENNECO	T	14,544
U.S. WEST	T	2,248
WESTINGHOUSE	T	6,720
MELVINE ATKINSON IRREVOCABLE TRUST		19,931
MELVINE ATKINSON CHARITABLE TRUST		43,056
TOTAL TO SCHEDULE B, LINE 5		100,418

STATEMENT B

SCHEDULE D (Form 1040)

Department of the Treasury
Internal Revenue Service

Capital Gains and Losses

(And Reconciliation of Forms 1099-B for Barter Transactions)

▶ Attach to Form 1040. ▶ See Instructions for Schedule D (Form 1040).
▶ For more space to list transactions for lines 1a and 8a, get Schedule D-1 (Form 1040).

OMB No. 1545-0074

1991

Attachment Sequence No. 12A

Name(s) shown on Form 1040

MELVINE B. ATKINSON

Your social security number

263-18-1569

Caution: Add the following amounts reported to you for 1991 on Forms 1099-B and 1099-S (or on substitute statements): (a) proceeds from transactions involving stocks, bonds, and other securities, and (b) gross proceeds from real estate transactions not reported on another form or schedule. If this total does not equal the total of lines 1c and 8c, column (d), attach a statement explaining the difference.

Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less

(a) Description of property (Example, 100 shares IBM, purchased on "2" Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see instructions)	(e) Cost or other basis (see instructions)	(f) LOSS If (e) is more than (d), subtract (d) from (e)	(g) GAIN If (d) is more than (e), subtract (e) from (d)
1a Stocks, Bonds, Other Securities, and Real Estate. Include Form 1099-S and 1099-B Transactions. See instructions.						
1b Amounts from Schedule D-1, line 1b						
1c Total of All Sales Price Amounts. Add column (d) of lines 1a and 1b ▶ 1c						
1d Other Transactions (Do NOT include real estate transactions from Forms 1099-S on this line. Report these on line 1c.)						

2	Short-term gain from sale or exchange of your home from Form 2119, line 10 or 14a	2	
3	Short-term gain from installment sales from Form 6252, line 22 or 30	3	
4	Net short-term gain or (loss) from partnerships, S corporations, and fiduciaries	4	
5	Short-term capital loss carryover from 1990 Schedule D, line 29	5	
6	Add lines 1a, 1b, 1d, and 2 through 5, in columns (f) and (g)	6	
7	Net short-term gain or (loss). Combine columns (f) and (g) of line 6	7	

Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year

8a Stocks, Bonds, Other Securities, and Real Estate. Include Form 1099-S and 1099-B Transactions. See instructions.						
220 SHRS COLUMBIA PICTURES	7/15/89	9/19/91	5,940	4,649		1,291
89.49 ACRES IN HENDERSONVILLE, NC	41	8/30/91	600,000	69,346		530,654
8b Amounts from Schedule D-1, line 8b						
8c Total of All Sales Price Amounts. Add column (d) of lines 8a and 8b ▶ 8c			605,940			
8d Other Transactions (Do NOT include real estate transactions from Forms 1099-S on this line. Report these on line 8c.)						

9	Long-term gain from sale or exchange of your home from Form 2119, line 10 or 14a	9	
10	Long-term gain from installment sales from Form 6252, line 38 or 50	10	
11	Net long-term gain or (loss) from partnerships, S corporations, and fiduciaries	11	
12	Capital gain distributions	12	
13	Gain from Form 4797, line 7 or 9	13	
14	Long-term capital loss carryover from 1990 Schedule D, line 30	14	
15	Add lines 8a, 8b, 8d, and 9 through 14, in columns (f) and (g)	15	531,945
16	Net long-term gain or (loss). Combine columns (f) and (g) of line 15	16	531,945

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule D (Form 1040) 1991

Schedule D (Form 1040) 1991 — Attachment Sequence No. 12A — Page 2

Name(s) shown on Form 1040. (Do not enter name and social security number if shown on other side.) — Your social security number

MELVINE B. ATKINSON — 263-18-1569

Part III Summary of Parts I and II

	Combine lines 7 and 16 and enter the net gain or (loss) here. If the result is a gain, also enter the gain on Form 1040, line 13. (Note: If both lines 16 and 17 are gains, see Part IV below.)	17	531,945
18	If line 17 is a (loss), enter here and as a (loss) on Form 1040, line 13, the smaller of:		
a	The (loss) on line 17; or		
b	($3,000) or, if married filing a separate return, ($1,500)	18	
	Note: When figuring whether line 18a or 18b is smaller, treat both numbers as positive.		
	Complete Part V if the loss on line 17 is more than the loss on line 18, OR if Form 1040, line 37, is zero.		

Part IV Tax Computation Using Maximum Capital Gains Rate

USE THIS PART TO FIGURE YOUR TAX ONLY IF BOTH LINES 16 AND 17 ARE GAINS, AND:

You checked filing status box: 1	AND	Form 1040, line 37, is over: $49,300	You checked filing status box: 3	AND	Form 1040, line 37, is over: $41,075
2 or 5		$82,150	4		$70,450

19	Enter the amount from Form 1040, line 37	19	532,252
20	Enter the smaller of line 16 or line 17	20	531,945
21	Subtract line 20 from line 19	21	307
22	Enter: a $20,350 if you checked filing status box 1; b $34,000 if you checked filing status box 2 or 3; c $17,000 if you checked filing status box 3; or d $27,300 if you checked filing status box 4	22	20,350
23	Enter the greater of line 21 or line 22	23	20,350
24	Subtract line 23 from line 19	24	511,902
25	Figure the tax on the amount on line 23. Use the Tax Table or Tax Rate Schedules, whichever applies	25	3,060
26	Multiply line 24 by 28% (.28)	26	143,333
27	Add lines 25 and 26. Enter here and on Form 1040, line 38, and check the box for Schedule D	27	146,393

Part V Capital Loss Carryovers from 1991 to 1992

Section A.—Carryover Limit

28	Enter the amount from Form 1040, line 35. If a loss, enclose the amount in parentheses	28	
29	Enter the loss from line 16 as a positive amount	29	
30	Combine lines 28 and 29. If zero or less, enter -0-	30	
31	Enter the smaller of line 29 or line 30	31	

Section B.—Short-Term Capital Loss Carryover to 1992 (Complete this section only if there is a loss on both lines 7 and 16.)

32	Enter the loss from line 7 as a positive amount			32	
33	Enter the gain, if any, from line 16	33			
34	Enter the amount from line 31	34			
35	Add lines 33 and 34			35	
36	Short-term capital loss carryover to 1992. Subtract line 35 from line 32. If zero or less, enter -0-			36	

Section C.—Long-Term Capital Loss Carryover to 1992 (Complete this section only if there is a loss on both lines 16 and 16.)

37	Enter the loss from line 16 as a positive amount			37	
38	Enter the gain, if any, from line 7		38		
39	Enter the amount from line 31	39			
40	Enter the amount, if any, from line 36	40			
41	Subtract line 40 from line 38. If zero or less, enter -0-		41		
42	Add lines 39 and 41			42	
43	Long-term capital loss carryover to 1992. Subtract line 42 from line 37. If zero or less, enter -0-			43	

Part VI Election Not to Use the Installment Method (Complete this part only if you elect out of the installment method and report a note or other obligation at less than full face value.)

A	Check here if you elect out of the installment method	▶	☐
44	Enter the face amount of the note or other obligation	▶	
45	Enter the percentage of valuation of the note or other obligation	▶	%

Part VII Reconciliation of Forms 1099-B for Barkering Transactions

(Complete this part if you received one or more Forms 1099-B or substitute statements reporting barkering income.)

			Amount of barkering income from Form 1099-B or substitute statement reported on form or schedule
	Form 1040, line 22	47	
48	Schedule C, D, E, or F (Form 1040) (specify) ▶	48	
49	Other form or schedule (identify) (if nonbusiness, indicate reason—attach additional sheets if necessary):	49	
50	Total. Add lines 47 through 49. This amount should be the same as the total barkering income on all Forms 1099-B and substitute statements received for barkering transactions	50	

Form **2119** — Department of the Treasury, Internal Revenue Service

Sale of Your Home

▶ Attach to Form 1040 for year of sale.
▶ See Separate Instructions. ▶ Please print or type.

OMB No. 1545-0072

1991

Attachment Sequence No. **20**

Your first name and initial (if joint return, also give spouse's name and initial) — Last name — Your social security number

MELVINE B. ATKINSON — 263-18-1569

Fill In Your Address Only If You Are Filing This Form by Itself and Not With Your Tax Return

Present address (no., street, and apt. no., rural route, or P.O. box no. if mail is not delivered to street address) — Spouse's social security number

City, town or post office, state, and ZIP code

Caution: If the home sold was financed (in whole or part) from a mortgage credit certificate or the proceeds of a tax-exempt qualified mortgage bond, you may owe additional tax. Get Form 8828, Recapture of Federal Mortgage Subsidy, for details.

Part I General Information

1a	Date your former main home was sold (month, day, year) ▶	1a	10/01/91
b	Face amount of any mortgage, note (e.g., second trust), or other financial instrument on which you will get periodic payments of principal or interest from the sale (see instructions)	1b	
2	Have you bought or built a new main home?		Yes [X] No
3	Is or was any part of either main home rented out or used for business? (If "Yes," see instructions.)		Yes [X] No

Part II Gain on Sale (Do not include amounts you deduct as moving expenses.)

4	Selling price of home. (Do not include personal property items that you sold with your home.)	4	200,000
5	Expense of sale. (Include sales commissions, advertising, legal, etc.)	5	1,530
6	Amount realized. Subtract line 5 from line 4	6	198,470
7	Basis of home sold (see instructions)	7	87,500
8a	Gain on sale. Subtract line 7 from line 6	8a	110,970

- If line 8a is zero or less, stop here and attach this form to your return.
- If line 2 is "Yes", you must go to Part III or Part IV, whichever applies. Otherwise, go to line 8b.

b If you haven't replaced your home, do you plan to do so within the replacement period (see instructions)? ☐ Yes [X] No

- If "Yes," stop here, attach this form to your return, and see Additional Filing Requirements in the instructions.
- If "No," you must go to Part III or Part IV, whichever applies.

Part III One-Time Exclusion of Gain for People Age 55 or Older (If you are not taking the exclusion, go to Part IV now.)

9a	Who was age 55 or older on date of sale?	[X] You ☐ Your spouse ☐ Both of you	
b	Did the person who was age 55 or older own and use the property as his or her main home for a total of at least 3 years (except for short absences) of the 5-year period before the sale? (If "No," go to Part IV now.)	[X] Yes ☐ No	
c	If line 9b is "Yes", do you elect to take the one-time exclusion? (If "No," go to Part IV now.)	[X] Yes ☐ No	
d	At time of sale, who owned the home?	[X] You ☐ Your spouse ☐ Both of you	
e	Social security number of spouse at time of sale if you had a different spouse from the one shown at line of sale. (If you were not married at time of sale, enter "None.") ▶	9e	NONE
f	Exclusion. Enter the smaller of line 8a or $125,000 ($62,500 if married filing separate return)	9f	110,970

Part IV Adjusted Sales Price, Taxable Gain, and Adjusted Basis of New Home

10	Subtract line 9f from line 8a	10	0

- If line 10 is zero, stop here and attach this form to your return.
- If line 2 is "Yes", go to line 11 now.
- If you are reporting this sale on the installment method, stop here and see the line 10 instructions.
- All others, stop here and enter the amount from line 10 on Schedule D, line 3 or line 8.

11	Fixing-up expenses. (See instructions for time limits)	11	
12	Adjusted sales price. Subtract line 11 from line 6	12	
13a	Date you moved into new home (month, day, year) ▶ ____ b Cost of new home	13b	
14a	Add line 9f and line 13b	14a	
b	Subtract line 14a from line 12. If the result is zero or less, enter -0-	14b	
c	Taxable gain. Enter the smaller of line 10 or line 14b	14c	

- If line 14c is zero, go to line 15 and attach this form to your return.
- If you are reporting this sale on the installment method, see line 14c instructions and go to line 16.
- All others, enter the amount from line 14c on Schedule D, line 3 or line 8, and go to line 16.

15	Postponed gain. Subtract line 14c from line 10	15	
16	Adjusted basis of new home. Subtract line 15 from line 13b	16	

Sign Here Only If You Are Filing This Form by Itself and Not With Your Tax Return

Under penalties of perjury, I declare that I have examined this form, including attachments, and to the best of my knowledge and belief, it is true, correct, and complete.

Your signature — Date — Spouse's signature — Date

(If a joint return, both must sign.)

For Paperwork Reduction Act Notice, see separate instructions. — Form 2119 (1991)

MELVINE B. ATKINSON

1991 263-18-1569

SUPPORTING SCHEDULE FOR FEDERAL FORM 1040

FORM(S) 8283
ON AUGUST 9, 1991 THE TAXPAYER ESTABLISHED A CHARITABLE REMAINDER ANNUITY TRUST UNDER IRC SECTION 664(D)(1) AND REV. PROC. 90-32 BY TRANSFERRING MARKETABLE SECURITIES WITH A MARKET VALUE OF $3,994,974. THE ATTACHED COMPUTATION PROVIDED BY THE UNIVERSITY OF FLORIDA SUPPORTS THE AMOUNT CLAIMED AS A DEDUCTION.

ON AUGUST 30, 1991 THE TAXPAYER SOLD 89.49 ACRES OF REAL ESTATE IN HENDERSONVILLE, NC TO THE FOUR SEASONS ARTS COUNCIL. THE ADDRESS OF THE PROPERTY IS 2825 KANUGA ROAD, HENDERSONVILLE, NC 28739. SEE THE ATTACHED FORM 8283 FOR OTHER REQUIRED INFORMATION.

UNIVERSITY OF FLORIDA

Life Income Deduction Calculator
Actuarial Calculations

5.00% Charitable Annuity Trust

ASSUMPTIONS:

[1]	Beneficiary Ages	95 68 71 43 41 37 48 51 50
[2]	Principal Donated	$3,994,974.00
[3]	Payout Rate	5.0000%
[4]	Payment Schedule	quarterly at end
[5]	Discount Rate under IRC Section 7520(a) for 8/91	9.8%

CALCULATIONS:

[6]	Value of $1 for measuring lives/term on [1] (Reg. 20.2031-7(e); IRS Notice 89-60)	10.0714
	[a] Adjustment factor for payment schedule on [4] (Table K in IRS Publication 1457)	1.0360
	[b] Adjusted value of $1 ([6] x [6a]) (Reg. 20.2031-7(b)(3))	10.4340
[7]	Remainder factor (1.0 - ([6b] x [3]))	0.47830
[8]	Annual Payment ([2] x [3])	$199,748.70
[9]	Value of Life Interest ([6b] x [8])	$2,084,177.94
[10]	CHARITABLE DEDUCTION ([2] - [9])	$1,910,796.06

Form **8283** (Rev. March 1989)

Department of the Treasury Internal Revenue Service

Noncash Charitable Contributions

▶ Attach to your tax return if the total claimed deduction for all property contributed exceeds $500.
▶ See separate instructions.

OMB No. 1545-0908 Expires 2-28-92

Attachment Sequence No. 55

Name(s) shown on your income tax return

MELVINE B. ATKINSON

Identification number

263-18-1569

Note: Compute the amount of your contribution deduction before completing Form 8283. (See your tax return instructions.)

Section A Include in Section A only items (or groups of similar items) for which you claimed a deduction of $5,000 or less per item or group, and certain publicly traded securities (see instructions).

Part I Information on Donated Property

1	(b) Name and address of the donee organization	(c) Description of donated property (attach a separate sheet if more space is needed)
A	SEE ATTACHED SEE ATTACHED	PUBLICLY TRADED SECURITIES
B		
C		
D		
E		

Note: If the amount you claimed as a deduction for the item is $500 or less, you do not have to complete columns (d), (e), and (f).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) Fair market value	(h) Method used to determine the fair market value
A	8/09/91	VARIOUS	INHERITANCE	296,130		COMPARATIVE SALES
B						
C						
D						
E						

Part II Other Information — If you gave less than an entire interest in property listed in Part I, complete lines 2a–2e.
If restrictions were attached to a contribution listed in Part I, complete lines 3a–3c.

2 If less than the entire interest in the property is contributed during the year, complete the following:

a Enter letter from Part I that identifies the property _____. (If Part II applies to more than one property, attach a separate statement.)

b Total amount claimed as a deduction for the property listed in Part I for this tax year _____;
for any prior tax year(s) _____

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different than the donee organization above).

_____
Name of charitable organization (donee)

_____
Address (number and street)

_____
City or town, state, and ZIP code

d The place where any tangible property is located or kept _____

e Name of any person, other than the donee organization, having actual possession of the property _____

3 If conditions were attached to any contribution listed in Part I, answer the following questions and attach the required statement (see instructions):

		Yes	No
a	Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property?		
b	Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire?		
c	Is there a restriction limiting the donated property for a particular use?		

Form 8283 (Rev. 3-90) Page 2

Name(s) shown on your income tax return: Melvine B. Atkinson — Identification number: 263-18-1569

Section B **Appraisal Summary**—Include in Section B only items (or groups of similar items) for which you claimed a deduction of more than $5,000 per item or group. *(Report contributions of certain publicly traded securities only in Section A.)*

If you donated art, you may have to attach the complete appraisal. See the Note in Part I below.

Part I Information on Donated Property *(To be completed by the taxpayer and/or appraiser.)*

1 Check type of property:

☐ Art* (contribution of $20,000 or more) ☒ Real Estate ☐ Gems/Jewelry ☐ Stamp Collections
☐ Art* (contribution of less than $20,000) ☐ Coin Collections ☐ Books ☐ Other

*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antique furniture, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects. Note: If you donated art after December 31, 1987, and your total art contribution deduction was $20,000 or more, you must attach a complete copy of the signed appraisal. See instructions.

2	(a) Description of donated property (attach a separate sheet if more space is needed)	(b) If tangible property was donated, give a brief summary of the overall physical condition at the time of the gift	(c) Appraised fair market value
A	89.49 acres on Kanuga Rd., Hendersonville, NC		995,000
B			
C			
D			

	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales after 6/6/83, enter amount received	See instructions (h) Amount claimed as a deduction	(i) Average trading price of securities
A	1941	Purchased	35,729	600,000		
B						
C						
D						

Part II Taxpayer (Donor) Statement—List any item(s) included in Part I above that is (are) separately identified in the appraisal as having a value of $500 or less. See instructions.

I declare that the following item(s) included in Part I above has (have) to the best of my knowledge and belief an appraised value of not more than $500 (per item). *(Enter identifying letter from Part I and describe the specific item):*

Signature of taxpayer (donor) ▶ Date ▶

Part III Certification of Appraiser *(To be completed by the appraiser of the above donated property.)*

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, married to, or related to any of the foregoing persons, or an appraiser regularly used by any of the foregoing persons and who does not perform a majority of appraisals during the taxable year for other persons.

Also, I declare that I hold myself out to the public as an appraiser or perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based upon a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this appraisal summary may subject me to the civil penalty under section 6701(a) (aiding and abetting the understatement of tax liability). I affirm that I have not been barred from presenting evidence or testimony by the Director of Practice.

Please Sign Here — Signature ▶ [signature] MAI SCA — Date of appraisal ▶ August 30, 1991

Business address: 206 3rd Avenue West — Identification number:

City or town, state, and ZIP code: Hendersonville, NC 28739

Part IV Donee Acknowledgment *(To be completed by the charitable organization.)*

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Part I on August 30, 1991 (Date).

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property (or any portion thereof) within 2 years after the date of receipt, it will file an information return (Form 8282, Donee Information Return) with the IRS and furnish the donor a copy of that return. This acknowledgment does not represent concurrence in the claimed fair market value.

Name of charitable organization (donee)	Employer identification number
The Four Seasons Arts Council	58-1430933
Address (number and street): P.O. Box 1486	City or town, state, and ZIP code: Hendersonville, NC 28793
Authorized signature: [signature] President	Title: President of Board	Date: 8/30/91

DECEASED 060793 MELVI B. ATKINSON

Form 1040 — Department of the Treasury—Internal Revenue Service — U.S. Individual Income Tax Return (T) — 1992

COPY

IRS Use Only—Do not staple or attach this form.

For the year Jan. 1–Dec. 31, 1992, or other tax year beginning , 1992, ending , 19 — OMB No. 1545-0074

Label (Use the IRS label. Otherwise, please print or type.)

MELVINE B. ATKINSON
2303 S.E. 17TH STREET #201
OCALA, FL 34471

Your social security number: 263-18-1569
Spouse's social security number:

For Privacy Act and Paperwork Reduction Act Notice, see page 4.

Presidential Election Campaign

Do you want $1 to go to this fund? — Yes [ ] No [X]
If a joint return, does your spouse want $1 to go to this fund? — Yes [ ] No [ ]
Note: Checking "Yes" will not change your tax or reduce your refund.

Filing Status (See page 10.) Check only one box.

1 [X] Single
2 [ ] Married filing joint return (even if only one had income)
3 [ ] Married filing separate return. Enter spouse's social security no. above and full name here. ▶
4 [ ] Head of household (with qualifying person). (See page 11.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶
5 [ ] Qualifying widow(er) with dependent child (year spouse died ▶ 19). (See page 11.)

Exemptions (See page 11.)

6a [X] Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a. But be sure to check the box on line 33b on page 2 — No. of boxes checked on 6a and 6b: 1
b [ ] Spouse
c Dependents: (1) Name (first, initial, and last name) | (2) Check if under age 1 | (3) If age 1 or older, dependent's social security number | (4) Dependent's relationship to you | (5) No. of months lived in your home in 1992
If more than six dependents, see page 12.
No. of your children on 6c who: • lived with you ____ • didn't live with you due to divorce or separation (see page 13) ____
No. of other dependents on 6c ____
d If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here ▶ [ ]
e Total number of exemptions claimed — Add numbers entered on lines above ▶ 1

Income — Attach Copy B of your Forms W-2, W-2G, and 1099-R here. If you did not get a W-2, see page 9. Attach check or money order on top of any Forms W-2, W-2G, or 1099-R.

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	
8a	Taxable interest income. Attach Schedule B if over $400	8a	3,978
b	Tax-exempt interest income (see page 16). DON'T include on line 8a	8b	
9	Dividend income. Attach Schedule B if over $400	9	89,453
10	Taxable refunds, credits, or offsets of state and local income taxes from worksheet on page 16	10	898
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	
13	Capital gain or (loss). Attach Schedule D	13	
14	Capital gain distributions not reported on line 13 (see page 16)	14	
15	Other gains or (losses). Attach Form 4797	15	
16a	Total IRA distributions 16a	b Taxable amount	16b	
17a	Total pensions and annuities 17a	b Taxable amount	17b	
18	Rents, royalties, partnerships, estates, trusts, etc. Attach Schedule E	18	
19	Farm income or (loss). Attach Schedule F	19	
20	Unemployment compensation (see page 17)	20	
21a	Social security benefits 21a 4,066	b Taxable amount	21b	2,033
22	Other income. List type and amount—see page 18	22	
23	Add the amounts in the far right column for lines 7 through 22. This is your total income ▶	23	96,362

Adjustments to Income (See page 18.)

24a	Your IRA deduction from applicable worksheet on page 19 or 20	24a	
b	Spouse's IRA deduction from applicable worksheet on page 19 or 20	24b	
25	One-half of self-employment tax (see page 20)	25	
26	Self-employed health insurance deduction (see page 20)	26	
27	Keogh retirement plan and self-employed SEP deduction	27	
28	Penalty on early withdrawal of savings	28	
29	Alimony paid. Recipient's SSN ▶	29	
30	Add lines 24a through 29.	▶	30	

Adjusted Gross Income

31	Subtract line 30 from line 23. This is your adjusted gross income. If this amount is less than $22,370 and a child lived with you, see page EIC-1 to find out if you can claim the "Earned Income Credit" on line 66. ▶	31	96,362

Form 1040 (1992) Page 2

MELVINE B. ATKINSON 263-18-1569

Tax Computation (See page 22.)	32	Amount from line 31 (adjusted gross income)		32	96,362
	33a	Check if: [X] You were 65 or older, [ ] Blind; [ ] Spouse was 65 or older, [ ] Blind. Add the number of boxes checked above and enter the total here ▶	33a	1	
	b	If your parent (or someone else) can claim you as a dependent, check here ▶	33b		
	c	If you are married filing separately and your spouse itemizes deductions or you are a dual-status alien, see page 22 and check here ▶	33c		
	34	Enter the larger of your: Itemized deductions from Schedule A, line 28, OR Standard deduction shown below for your filing status. But if you checked any box on line 33a or b, go to page 22 to find your standard deduction. If you checked box 33c, your standard deduction is zero. • Single—$3,600 • Head of household—$5,250 • Married filing jointly or Qualifying widow(er)—$6,000 • Married filing separately—$3,000	34		73,084
	35	Subtract line 34 from line 32	35		23,278
	36	If line 32 is $78,950 or less, multiply $2,300 by the total number of exemptions claimed on line 6e. If line 32 is over $78,950, see the worksheet on page 23 for the amount to enter	36		2,300
	37	Taxable income. Subtract line 36 from line 35. If line 36 is more than line 35, enter -0-	37		20,978
If you want the IRS to figure your tax, see page 23.	38	Enter tax. Check if from a [X] Tax Table, b [ ] Tax Rate Schedules, c [ ] Schedule D, or d [ ] Form 8615 (see page 23). Amount, if any, from Form(s) 8814 ▶ e	38		3,146
	39	Additional taxes (see page 23). Check if from a [ ] Form 4970 b [ ] Form 4972	39		
	40	Add lines 38 and 39 ▶	40		3,146
Credits (See page 23.)	41	Credit for child and dependent care expenses. Attach Form 2441	41		
	42	Credit for the elderly or the disabled. Attach Schedule R	42		
	43	Foreign tax credit. Attach Form 1116	43		
	44	Other credits (see page 24). Check if from a [ ] Form 3800 b [ ] Form 8396 c [ ] Form 8801 d [ ] Form (specify)	44		
	45	Add lines 41 through 44	45		
	46	Subtract line 45 from line 40 ▶	46		3,146
Other Taxes	47	Self-employment tax. Attach Schedule SE. Also, see line 25	47		
	48	Alternative minimum tax. Attach Form 6251	48		2,683
	49	Recapture taxes (see page 25). Check if from a [ ] Form 4255 b [ ] Form 8611 c [ ] Form 8828	49		
	50	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	50		
	51	Tax on qualified retirement plans, including IRAs. Attach Form 5329	51		
	52	Advance earned income credit payments from Form W-2	52		
	53	Add lines 46 through 52. Total tax ▶	53		5,829
Payments Attach Forms W-2, W-2G, and 1099-R on the front.	54	Federal income tax withheld. If any is from Form(s) 1099, check ▶ [ ]	54		
	55	1992 estimated tax payments and amount applied from 1991 return	55	34,658	
	56	Earned income credit. Attach Schedule EIC	56		
	57	Amount paid with Form 4868 (extension request)	57		
	58	Excess social security, Medicare, and RRTA tax withheld (see page 26)	58		
	59	Other payments (see page 26). Check if from a [ ] Form 2439 b [ ] Form 4136	59		
	60	Add lines 54 through 59. Total payments ▶	60		34,658
Refund or Amount You Owe Attach check or money order on top of Form(s) W-2, etc., on the front.	61	If line 60 is more than line 53, subtract line 53 from line 60. This is the amount you OVERPAID ▶	61		28,829
	62	Amount of line 61 you want REFUNDED TO YOU ▶	62		
	63	Amount of line 61 you want APPLIED TO YOUR 1993 ESTIMATED TAX ▶	63	28,829	
	64	If line 53 is more than line 60, subtract line 60 from line 53. This is the AMOUNT YOU OWE. Attach check or money order for full amount payable to "Internal Revenue Service." Write your name, address, social security number, daytime phone number, and "1992 Form 1040" on it	64		
	65	Estimated tax penalty (see page 27). Also include on line 64	65		

Sign Here — Keep a copy of this return for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature — Date — Your occupation

Spouse's signature. If a joint return, BOTH must sign. — Date — Spouse's occupation

Paid Preparer's Use Only

Preparer's signature: Annette C. Furman CPA — Date: 10-15-93 — Check if self-employed [ ] — Preparer's social security no.: 266-45-1412

Firm's name (or yours if self-employed) and address: DUGGAN, JOINER, BIRKENMEYER, STAFFORD & FURMAN, P.A., CPA'S, 334 N.W. THIRD AVENUE, OCALA, FLORIDA 34475 — E.I. no.: 59-1349759

05710AKS 10/15/93

SCHEDULES A&B (Form 1040)
Department of the Treasury
Internal Revenue Service

Schedule A—Itemized Deductions

(Schedule B is on back)

▶ Attach to Form 1040. ▶ See Instructions for Schedules A and B (Form 1040).

OMB No. 1545-0074

1992

Attachment Sequence No. 07

Name(s) shown on Form 1040

ALVINB B. ATKINSON

Your social security number

263-18-1569

Medical and Dental Expenses	Caution: Do not include expenses reimbursed or paid by others.					
	1 Medical and dental expenses (see page A-1)	1	21,902			
	2 Enter amount from Form 1040, line 32	2	96,362			
	3 Multiply line 2 above by 7.5% (.075)	3	7,227			
	4 Subtract line 3 from line 1. If zero or less, enter -0-			▶	4	14,675
Taxes You Paid (See page A-1.)	5 State and local income taxes	5	29,500			
	6 Real estate taxes (see page A-2)	6				
	7 Other taxes. ▶	7				
	8 Add lines 5 through 7			▶	8	29,500
Interest You Paid (See page A-2.) Note: Personal interest is not deductible.	9a Home mortgage interest and points reported to you on Form 1098	9a				
	b Home mortgage interest not reported to you on Form 1098. If paid to an individual, show that person's name and address. ▶	9b				
	10 Points not reported to you on Form 1098. See page A-3 for special rules	10				
	11 Investment interest. (See page A-3.)	11				
	12 Add lines 9a through 11			▶	12	
Gifts to Charity (See page A-3.)	Caution: If you made a charitable contribution and received a benefit in return, see page A-3.					
	13 Contributions by cash or check	13				
	14 Other than cash or check. If over $500, you MUST attach Form 8283	14				
	15 Carryover from prior year	15				
	16 Add lines 13 through 15 LIMITED BY AGI. SEE ATTACHED			▶	16	28,909
Casualty and Theft Losses	17 Casualty or theft loss(es). Attach Form 4684. (See page A-4.)			▶	17	
Moving Expenses	18 Moving expenses. Attach Form 3903 or 3903F. (See page A-4.)			▶	18	
Job Expenses and Most Other Miscellaneous Deductions (See page A-4 for expenses to deduct here.)	19 Unreimbursed employee expenses—job travel, union dues, job education, etc. If required, you MUST attach Form 2106. (See page A-4.) ▶	19				
	20 Other expenses—investment, tax prep, safe deposit box, etc. List type and amt ▶	20				
	21 Add lines 19 and 20	21				
	22 Enter amount from Form 1040, line 32	22				
	23 Multiply line 22 above by 2% (.02)	23				
	24 Subtract line 23 from line 21. If zero or less, enter -0-			▶	24	
Other Miscellaneous Deductions	25 Other—from list on page A-5. List type and amount ▶			▶	25	
Total Itemized Deductions	26 Is the amount on Form 1040, line 32, more than $108,950 (more than $83,625 if married filing separately)? • NO. Your deduction is not limited. Add lines 4, 8, 12, 16, 17, 18, 24, and 25. • YES. Your deduction may be limited. See page A-5 for the amount to enter.			▶	26	73,084
	Caution: Be sure to enter on Form 1040, line 34, the LARGER of the amount on line 26 above or your standard deduction.					

For Paperwork Reduction Act Notice, see Form 1040 Instructions.

Schedule A (Form 1040) 1992

Schedules A&B (Form 1040) 1992 — OMB No. 1545-0074 — Page 2

Name(s) shown on Form 1040. Do not enter name and social security number if shown on other side. — Your social security number

MELVINE B. ATKINSON — 263-18-1569

Schedule B—Interest and Dividend Income

Attachment Sequence No. 08

Part I Interest Income (See pages 14 and B-1.)

If you had over $400 in taxable interest income OR are claiming the exclusion of interest from series EE U.S. savings bonds issued after 1989, you must complete this part. List ALL interest you received. If you had over $400 in taxable interest income, you must also complete Part III. If you received, as a nominee, interest that actually belongs to another person, or you received or paid accrued interest on securities transferred between interest payment dates, see page B-1.

Note: If you received a Form 1099-INT, Form 1099-OID, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

Interest Income		Amount
1 List name of payer—If any interest income is from seller-financed mortgages, see page B-1 and list this interest first. ▶		
FIRST UNION	1	2,607
SUN BANK T	1	1,371
2 Add the amounts on line 1	2	3,978
3 Excludable interest on series EE U.S. savings bonds issued after 1989 from Form 8815, line 14. You MUST attach Form 8815 to Form 1040.	3	
4 Subtract line 3 from line 2. Enter the result here and on Form 1040, line 8a ▶	4	3,978

Part II Dividend Income (See pages 14 and B-1.)

If you had over $400 in gross dividends and/or other distributions on stock, you must complete this part and Part III. If you received, as a nominee, dividends that actually belong to another person, see page B-1.

Note: If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total dividends shown on that form.

Dividend Income		Amount
5 List name of payer—Include on this line capital gain distributions, nontaxable distributions, etc. ▶		
MELVINE ATKINSON CHARITABLE TRUST	5	89,453
6 Add the amounts on line 5	6	89,453
7 Capital gain distributions. Enter here and on Schedule D*	7	
8 Nontaxable distributions. (See the inst. for Form 1040, line 9.)	8	
9 Add lines 7 and 8	9	
10 Subtract line 9 from line 6. Enter the result here and on Form 1040, line 9 ▶	10	89,453

*If you received capital gain distributions but do not need Schedule D to report any other gains or losses, see the instructions for Form 1040, lines 13 and 14.

Part III Foreign Accounts and Foreign Trusts (See page B-2.)

If you had over $400 of interest or dividends OR had a foreign account or were a grantor of, or a transferor to, a foreign trust, you must complete this part.

	Yes	No
11a At any time during 1992, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? See page B-2 for exceptions and filing requirements for Form TD F 90-22.1		X
b If "Yes," enter the name of the foreign country ▶		
12 Were you the grantor of, or transferor to, a foreign trust that existed during 1992, whether or not you have any beneficial interest in it? If "Yes," you may have to file Form 3520, 3520-A, or 926		X

Form **6251** — Department of the Treasury Internal Revenue Service (T)

Alternative Minimum Tax—Individuals

▶ See separate instructions.
▶ Attach to Form 1040 or Form 1041.

OMB No. 1545-0227

1992

Attachment Sequence No. **32**

Name(s) shown on Form 1040 — Your social security number

KELVINE B. ATKINSON — 263-18-1569

1	Enter the amount from Form 1040, line 35. If less than zero, enter as a negative amount			1	23,278
2	Net operating loss deduction, if any, from Form 1040, line 22. Enter as a positive amount			2	
3	Overall itemized deductions limitation amount (see instructions)			3	
4	Combine lines 1, 2, and 3			4	23,278
5	Adjustments: (See instructions before completing.)				
a	Standard deduction, if any, from Form 1040, line 34	5a			
b	Medical and dental expenses. Enter the smaller of the amount from Schedule A (Form 1040), line 4 or 2 1/2% (.025) of Form 1040, line 32	5b	2,409		
c	Miscellaneous itemized deductions from Schedule A (Form 1040), line 24	5c			
d	Taxes from Schedule A (Form 1040), line 8	5d	29,500		
e	Refund of taxes	5e	898-		
f	Certain home mortgage interest	5f			
g	Investment interest expense	5g			
h	Depreciation of tangible property placed in service after 1986	5h			
i	Circulation and research and experimental expenditures paid or incurred after 1986	5i			
j	Mining exploration and development costs paid or incurred after 1986	5j			
k	Long-term contracts entered into after 2/28/86	5k			
l	Pollution control facilities placed in service after 1986	5l			
m	Installment sales of certain property	5m			
n	Adjusted gain or loss	5n			
o	Incentive stock options	5o			
p	Certain loss limitations	5p			
q	Tax shelter farm activities	5q			
r	Passive activities	5r			
s	Beneficiaries of estates and trusts	5s			
t	Combine lines 5a through 5s			5t	31,011
6	Tax preference items: (See instructions before completing.)				
a	Appreciated property charitable deduction	6a			
b	Tax-exempt interest from private activity bonds issued after 8/7/86	6b			
c	Depletion	6c			
d	Accelerated depreciation of real property placed in service before 1987	6d			
e	Accelerated depreciation of leased personal property placed in service before 1987	6e			
f	Intangible drilling costs	6f			
g	Add lines 6a through 6f			6g	
7	Combine lines 4, 5t, and 6g			7	54,289
8	Energy preference adjustment for certain taxpayers. Do not enter more than 40% of line 7. See instructions			8	
9	Subtract line 8 from line 7			9	54,289
10	Alternative tax net operating loss deduction. See instructions for limitations			10	
11	Alternative minimum taxable income. Subtract line 10 from line 9. If married filing separately, see instructions			11	54,289
12	Enter: $40,000 ($30,000 if married filing separately; $20,000 if single or head of household)			12	30,000
13	Enter: $150,000 ($75,000 if married filing separately; $112,500 if single or head of household)			13	112,500
14	Subtract line 13 from line 11. If zero or less, enter -0- here and on line 15 and go to line 16			14	0
15	Multiply line 14 by 25% (.25)			15	0
16	Exemption. Subtract line 15 from line 12. If zero or less, enter -0-. If completing this form for a child under age 14, see instructions for amount to enter			16	30,000
17	Subtract line 16 from line 11. If zero or less, enter -0- here and on line 22 and skip lines 18 through 21			17	24,289
18	Multiply line 17 by 24% (.24)			18	5,829
19	Alternative minimum tax foreign tax credit. See instructions			19	
20	Tentative minimum tax. Subtract line 19 from line 18			20	5,829
21	Enter your tax from Form 1040, line 38, minus any foreign tax credit on Form 1040, line 43. If an amount from Form 4970 is entered on line 69 of Form 1040, also include the amount from Form 4970 on this line			21	3,146
22	Alternative minimum tax. Subtract line 21 from line 20. If zero or less, enter -0-. Enter this amount on Form 1040, line 48. If completing this form for a child under age 14, see instructions for amount to enter			22	2,683

For Paperwork Reduction Act Notice, see separate instructions.

Form 6251 (1992)

MELVINE B. ATKINSON

263-18-1569

SCHEDULE A - ITEMIZED DEDUCTIONS SUPPORTING SCHEDULE - 1992

MEDICAL AND DENTAL EXPENSES

PRESCRIPTION MEDICINES AND DRUGS	MEDICAL INSURANCE PREMIUMS	DOCTORS, NURSES AND HOSPITALS	MILEAGE TRANSPORTATION AND LODGING	OTHER MEDICAL
		21,902		
TOTAL TO SCH. A, LINE 1		21,902		

CONTRIBUTIONS

RECIPIENT	50 PCT.	30 PCT CAP. GAIN	OTHER	20 PCT.	NON CASH	TOTAL
PRIOR YEARS CRYOVR		2,680,635			X	
TOTAL		2,680,635				2,680,635
CARRYOVER		2,651,726				2,651,726
ALLOWABLE		28,909				
ALLOWABLE CONTRIBUTIONS T SCH. A, LINE 16						28,909

STATEMENT A

DECEASED MELVINE B. ATKI[illegible]ON 6/07/93

Form 1040 U.S. Individual Income Tax Return (7) 1993 COPY

Label (See instructions on page 12.)
Use the IRS label. Otherwise, please print or type.

For the year Jan. 1 – Dec. 31, 1993, or other tax year beginning , 1993, ending , 19 OMB No. 1545-0074

	Your first name and initial	Last name	Your social security number
	MELVINE B. ATKINSON		263-18-1569
	If a joint return, spouse's first name and initial	Last name	Spouse's social security number
	Home address (number and street). If you have a P.O. box, see page 12.		Apt. no.
	C/O C.J.MACQUARRIE,2303 S.E.17TH STREET #201		
	City, town or post office, state, and ZIP code. If you have a foreign address, see page 12.		
	OCALA, FL 34471		

For Privacy Act and Paperwork Reduction Act Notice, see page 4.

Presidential Election Campaign (See page 12.)

	Yes	No	Note: Checking "Yes" will not change your tax or reduce your refund.
Do you want $3 to go to this fund?		X	
If a joint return, does your spouse want $3 to go to this fund?			

Filing Status (See page 12.) Check only one box.

1 [X] Single
2 [ ] Married filing joint return (even if only one had income)
3 [ ] Married filing separate return. Enter spouse's soc. sec. no. above & full name here ▶
4 [ ] Head of household (with qualifying person). (See page 13.) If the qualifying person is a child but not your dependent, enter this child's name here ▶
5 [ ] Qualifying widow(er) with dependent child (year spouse died ▶ 19). (See page 13.)

Exemptions (See page 13.)

6a [X] Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a. But be sure to check the box on line 33b on page 2. } No. of boxes checked on 6a and 6b: 1
b [ ] Spouse. } No. of your children on 6c who:
c Dependents: (1) Name (first, initial, and last name) | (2) Check if under age 1 | (3) If age 1 or older, dependent's social security number | (4) Dependent's relationship to you | (5) No. of months lived in your home in '93

- lived with you
- didn't live with you due to divorce or separation (see page 13)

Dependents on 6c not listed above:

If more than six dependents, see page 14.

d If your child didn't live with you but is claimed as your dep. under pre-1985 agreement, check ▶ [ ]
e Total number of exemptions claimed. Add numbers entered on lines above ▶ 1

Income

7	Wages, salaries, tips, etc. Attach Form(s) W-2.		7	
8a	Taxable interest income (see page 16). Attach Schedule B if over $400		8a	30
b	Tax-exempt interest income (see pg. 17). DON'T include on line 8a. 8b			
9	Dividend income. Attach Schedule B if over $400		9	21577
10	Taxable refunds, credits, or offsets of state and local income taxes (see page 17)		10	
11	Alimony received		11	
12	Business income or (loss). Attach Schedule C or C-EZ		12	
13	Capital gain or (loss). Attach Schedule D		13	4386
14	Capital gain distributions not reported on line 13 (see page 17)		14	
15	Other gains or (losses). Attach Form 4797		15	
16a	Total IRA distributions 16a	b Taxable amount (pg. 18)	16b	
17a	Total pensions and annuities 17a	b Taxable amount (pg. 18)	17b	
18	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		18	
19	Farm income or (loss). Attach Schedule F		19	
20	Unemployment compensation (see page 19)		20	
21a	Social security benefits 21a 2608	b Taxable amount (pg. 19)	21b	1149
22	Other income.		22	
23	Add the amounts in the far right column for lines 7 through 22. This is your total income ▶		23	27142

Attach Copy B of your Forms W-2, W-2G, and 1099-R here.

If you did not get a W-2, see page 16.

If you are attaching a check or money order, put it on top of any Forms W-2, W-2G, or 1099-R.

Adjustments to Income (See page 20.)

24a	Your IRA deduction (see page 20)	24a		
b	Spouse's IRA deduction (see page 20)	24b		
25	One-half of self-employment tax (see page 21)	25		
26	Self-employed health insurance deduction (see page 22)	26		
27	Keogh retirement plan and self-employed SEP deduction	27		
28	Penalty on early withdrawal of savings	28		
29	Alimony paid. Recipient's SSN ▶	29		
30	Add lines 24a through 29. These are your total adjustments. ▶		30	0

Adjusted Gross Income

31	Subtract line 30 from line 23. This is your adjusted gross income. If amount is less than $22,050 & a child lived w/ you, see pg. EIC-1 to find out if you can claim "Earned Income Credit" on line 56. ▶	31	27142

Form 1040 (1993)

Form 1040 (1993) MELVINE B. ATTISON 263-18-1569 Page 2

Tax Computation (See page 21)	32	Amount from line 31 (adjusted gross income)		32	27142
	33	a Check if: ☒ You were 65 or older, ☐ Blind; ☐ Spouse was 65 or older, ☐ Blind. Add the number of boxes checked above and enter the total here ▶ 33a	1		
		b If your parent (or someone else) can claim you as a dependent, check here ▶ 33b ☐			
		c If you are married filing separately and your spouse itemizes deductions or you are a dual-status alien, see page 24 and check here ▶ 33c ☐			
	34	Enter the larger of your: Itemized deductions from Schedule A, line 35, OR Standard deduction shown below for your filing status. But if you checked any box on line 33a or b, go to page 24 to find your standard deduction. If you checked box 33c, your standard deduction is zero. • Single – $3,700 • Head of household – $5,450 • Married filing jointly or Qualifying widow(er) – $6,200 • Married filing separately – $3,100		34	57895
	35	Subtract line 34 from line 32		35	-30753
	36	If line 32 is $81,395 or less, multiply $2,350 by the total number of exemptions claimed on line 6e. If line 32 is over $81,395, see the worksheet on page 25 for the amount to enter		36	2350
	37	Taxable income. Subtract line 36 from line 35. If line 35 is more than line 36, enter -0-		37	0
If you want the IRS to figure your tax, see page 24.	38	Tax. Check if from a ☒ Tax Table, b ☐ Tax Rate Schedules, c ☐ Schedule D Tax Worksheet, or d ☐ Form 8615 (see page 25). Amount, if any, from Form(s) 8814 ▶ e		38	0
	39	Additional taxes (see page 25). Check if from a ☐ Form 4970 b ☐ Form 4972		39	
	40	Add lines 38 and 39	▶	40	0
Credits (See page 25.)	41	Credit for child and dependent care expenses. Att. Form 2441	41		
	42	Credit for the elderly or the disabled. Attach Schedule R	42		
	43	Foreign tax credit. Attach Form 1116	43		
	44	Other credits (see page 26). Check if from a ☐ Form 3800 b ☐ Form 8396 c ☒ Form 8801 d ☐ Form (specify)	44		
	45	Add lines 41 through 44		45	
	46	Subtract line 45 from line 40. If line 45 is more than line 40, enter -0-	▶	46	0
Other Taxes	47	Self-employment tax. Att. Sch. SE		47	
	48	Alternative minimum tax. Attach Form 6251		48	
	49	Recapture taxes (see page 26). Check if from a ☐ Form 4255 b ☐ Form 8611 c ☐ Form 8828		49	
	50	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137		50	
	51	Tax on qualified retirement plans, including IRAs. Attach Form 5329		51	
	52	Advance earned income credit payments from Form W-2		52	
	53	Add lines 46 through 52. This is your total tax	▶	53	0
Payments	54	Federal income tax withheld. If any is from Form(s) 1099, check ▶ ☐	54		
	55	1993 estimated tax payments and amount applied from 1992 return	55	28829	
	56	Earned income credit. Att. Schedule EIC BCO	56		
Attach Forms W-2, W-2P, and 1099-R on the front.	57	Amount paid with Form 4868 (extension request)	57		
	58	a Excess social security, Medicare, & RRTA tax withheld (see pg. 28)	58a		
		b Deferral of additional 1993 taxes. Attach Form 8841	58b		
	59	Other payments (see page 28). Check if from a ☐ Form 2439 b ☐ Form 4136	59		
	60	Add lines 54 through 59. These are your total payments	▶	60	28829
Refund or Amount You Owe	61	If line 60 is more than line 53, subtract line 53 from line 60. This is the amount you OVERPAID	▶	61	28829
	62	Amount of line 61 you want REFUNDED TO YOU	▶	62	28829
	63	Amount of line 61 you want APPLIED TO 1994 ESTIMATED TAX ▶	63		
	64	If line 53 is more than line 60, subtract line 60 from line 53. This is the AMOUNT YOU OWE. For details on how to pay, including what to write on your payment, see page 29		64	
	65	Est. tax penalty (see pg. 29). Also incl. on ln. 64	65		

Sign Here — Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature | Date | Your occupation

Keep a copy of this return for your records. Spouse's signature. If a joint return, BOTH must sign. | Date | Spouse's occupation

Paid Preparer's Use Only — Preparer's signature: Annette C. Thompson CPA | Date: 9-6-94 | Check if self-employed ☐ | Preparer's social security no.: 266-45-1412

Firm's name (or yours if self-employed) and address: DUGGAN, JOINER, BIRKEMEYER ETAL, 334 N.W. 3RD AVE., OCALA, FL | E.I. No.: 59-1349759 | ZIP code: 34475-8828

(Form 1040)

Schedule A–Itemized Deductio

(Schedule B is on back)

▶ Attach to Form 1040. ▶ See instructions for Schedules A and B (Form 1040).

OMB No. 1545-0074

1993

Attachment Sequence No. 07

MELVINE B. ATKINSON

263-18-1569

Medical and Dental Expenses		Caution: Do not include expenses reimbursed or paid by others.				
	1	Medical and dental expenses (see page A–1)	1	51788		
	2	Enter amount from Form 1040, line 32 ... 2 | 27142				
	3	Multiply line 2 above by 7.5% (.075)	3	2036		
	4	Subtract line 3 from line 1. If zero or less, enter -0- ▶			4	49752
Taxes You Paid (See page A–1.)	5	State and local income taxes	5			
	6	Real estate taxes (see page A–2)	6			
	7	Other taxes. (List – include personal property taxes.) ▶	7			
	8	Add lines 5 through 7 ▶			8	0
Interest You Paid (See page A–2.) Note: Personal interest is not deductible.	9a	Home mortgage interest and points reported on Form 1098	9a			
	b	Home mortgage interest not reported on Form 1098. If paid to the person from whom you bought the home, see page A–2 & show that person's name, ID no. & address ▶	9b			
	10	Points not reported on Form 1098. See page A–3	10			
	11	Investment interest. If required, attach Form 4952. (See page A–3)	11			
	12	Add lines 9a through 11 ▶			12	0
Gifts to Charity (See page A–3.)		Caution: If you made a charitable contribution and received a benefit in return, see page A–3.				
	13	Contributions by cash or check	13			
	14	Other than cash or check. If over $500, attach Form 8283	14			
	15	Carryover from prior year	15	2651726		
	16	Add lines 13 through 15. Enter the total ▶			16	8143
Casualty and Theft Losses	17	Casualty or theft loss(es). Attach Form 4684. (See page A–4.) ▶			17	0
Moving Expenses	18	Moving expenses. Attach Form 3903 or 3903F. (See page A–4.) ▶			18	0
Job Expenses and Most Other Miscellaneous Deductions (See page A–3 for expenses to deduct here.)	19	Unreimbursed employee expenses – job travel, union dues, job education, etc. If required, you MUST attach Form 2106. (See page A–4.) ▶	19			
	20	Other expenses – investment, tax preparation, safe deposit box, etc.) ▶	20			
	21	Add lines 19 and 20	21			
	22	Enter amount from Form 1040, line 32 ... 22 |				
	23	Multiply line 22 above by 2% (.02)	23			
	24	Subtract line 23 from line 21. If zero or less, enter -0- ▶			24	0
Other Miscellaneous Deductions	25	Other – from list on page A–5. List type and amount ▶ ▶			25	0
Total Itemized Deductions	26	Is the amount on Form 1040, line 32, more than $108,400 (more than $54,200 if married filing separately)? • NO. Your deduction is not limited. Add lines 4, 8, 12, 16, 17, 18, 24, and 25 and enter the total here. Also enter on Form 1040, line 34, the larger of this amount or your standard deduction. • YES. Your deduction may be limited. See page A–5 for the amount to enter. ▶			26	57895

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule A (Form 1040) 1993

Schedules A&B (Form 1040) 1993 — OMB No. 1545-0074 — Page 2

Name(s) as shown on Form 1040. Do not enter name and social security number if shown on other side.

MELVINE B. ATKINSON — Your social security number: 263-18-1569

Schedule B – Interest and Dividend Income

Attachment Sequence No. 08

Part I Interest Income (See pages 18 and B-1.)

Note: If you had over $400 in taxable interest income, you must also complete Part III.

Interest Income		Amount
1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see page B-1 and list this interest first. Also show that buyer's social security number and address ▶		
FIRST UNION	1	29
SUN BANK		1
2 Add the amounts on line 1	2	30
3 Excludable interest on series EE U.S. savings bonds issued after 1989 from Form 8815, line 14. You must attach Form 8815 to Form 1040	3	
4 Subtract line 3 from line 2. Enter the result here and on Form 1040, line 8a ▶	4	30

Note: If you received a Form 1099-INT, Form 1099-OID, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

Part II Dividend Income (See pages 17 and B-1.)

Note: If you had over $400 in gross dividends and/or other distributions on stock, you must also complete Part III.

Dividend Income		Amount
5 List name of payer. Include gross dividends and/or other distributions on stock here. Any capital gain distributions and nontaxable distributions will be deducted on lines 7 and 8 ▶		
MELVINE ATKINSON IRREV.TR.	5	59
MELVINE ATKINSONCHARITABLE TRUST		21518
6 Add the amounts on line 5	6	21577
7 Capital gain distributions. Enter here and on Schedule D*	7	
8 Nontaxable distributions. (See the instr. for Form 1040, line 9.)	8	
9 Add lines 7 and 8	9	
10 Subtract line 9 from line 6. Enter the result here and on Form 1040, line 9 ▶	10	21577

Note: If you received capital gain distributions but do not need Schedule D to report any other gains or losses, see the instructions for Form 1040, lines 13 and 14.

Part III Foreign Accounts and Trusts (See page B-2.)

If you had over $400 of interest or dividends OR had a foreign account or were a grantor of, or a transferor to, a foreign trust, you must complete this part.	Yes	No
11a At any time during 1993, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? See page B-2 for exceptions and filing requirements for Form TD F 90-22.1		X
b If "Yes," enter the name of foreign country ▶		
12 Were you the grantor of, or transferor to, a foreign trust which existed during 1993, whether or not you have any beneficial interest in it? If "Yes," you may have to file Form 3520, 3520-A, or 926		X

SCHEDULE D (Form 1040)

Department of the Treasury
Internal Revenue Service (T)

Capital Gains and Losses

▶ Attach to Form 1040. ▶ See Instructions for Schedule D (Form 1040).
▶ Use lines 20 and 22 for more space to list transactions for lines 1 and 9.

OMB No. 1545-0074

1993

Attachment Sequence No. 12

MELVINE B. ATKINSON

Your social security number
263-18-1569

Part I Short-Term Capital Gains and Losses – Assets Held One Year or Less

(a) Description of property (Example, 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D–3)	(e) Cost or other basis (see page D–3)	(f) LOSS If (e) is more than (d), subtract (d) from (e)	(g) GAIN If (d) is more than (e), subtract (e) from (d)

2	Enter your short-term totals, if any, from line 21	2			
3	Total short-term sales price amounts. Add column (d) of lines 1 and 2	3			
4	Short-term gain from Forms 2119 and 6252, and short-term gain or (loss) from Forms 4684, 6781, and 8824			4	
5	Net short-term gain or (loss) from partnerships, S corporations, and fiduciaries from Schedule(s) K–1			5	
6	Short-term capital loss carryover from 1992 Schedule D, line 28			6	
7	Add lines 1, 2, and 4 through 6, in columns (f) and (g)			7	( )
8	Net short-term capital gain or (loss). Combine columns (f) and (g) of line 7				8

Part II Long-Term Capital Gains and Losses – Assets Held More Than One Year

(a) Description of property (Example, 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D–3)	(e) Cost or other basis (see page D–3)	(f) LOSS If (e) is more than (d), subtract (d) from (e)	(g) GAIN If (d) is more than (e), subtract (e) from (d)

10	Enter your long-term totals, if any, from line 23	10			
11	Total long-term sales price amounts. Add column (d) of lines 9 and 10	11			
12	Gain from Form 4797; long-term gain from Forms 2119, 6439, and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824			12	
13	Net long-term gain or (loss) from partnerships, S corporations, and fiduciaries from Schedule(s) K–1			13	438
14	Capital gain distributions			14	
15	Long-term capital loss carryover from 1992 Schedule D, line 45			15	
16	Add lines 9, 10, and 12 through 15, in columns (f) and (g)			16	( ) 438
17	Net long-term capital gain or (loss). Combine columns (f) and (g) of line 16				17 438

Part III Summary of Parts I and II

18	Combine lines 8 and 17. If a loss, go to line 19. If a gain, enter the gain on Form 1040, line 13. Note: If both lines 17 and 19 are gains, see the Schedule D Tax Worksheet on page D–3	18	438
19	If line 18 is a (loss), enter here and as a (loss) on Form 1040, line 13, the smaller of these losses: a The (loss) on line 18; or b ($3,000) or, if married filing separately, ($1,500)	19	( )

Note: See the Capital Loss Carryover Worksheet on page D–4 if the loss on line 18 exceeds the loss on line 19 or if Form 1040, line 35, is a loss.

Schedule E (Form 1040) 1993 — Attachment Sequence No. 13 — Page 2

Name(s) shown on return. — Your social security number

MELVINE B. ATKINSON — 263-18-1569

Note: If you report amounts from farming or fishing on Schedule E, you must enter your gross income from those activities on line 41 below.

Part II Income or Loss From Partnerships and S Corporations

If you report a loss from an at-risk activity, you MUST check either column (e) or (f) of line 27 to describe your investment in the activity. See page E-3. If you check column (f), you must attach Form 6198.

27	(a) Name	(b) Enter P for partnership; S for S corp.	(c) Check if foreign partnership	(d) Employer identification number	(e) All is at risk	(f) Some is not at risk
A						
B						
C						
D						
E						

	Passive Income and Loss		Nonpassive Income and Loss		
	(g) Passive loss allowed (attach Form 8582 if required)	(h) Passive income from Schedule K-1	(i) Nonpassive loss from Schedule K-1	(j) Section 179 expense deduction from Form 4562	(k) Nonpassive income from Schedule K-1
A					
B					
C					
D					
E					
28a Totals					
b Totals					
29 Add columns (h) and (k) of line 28a					29
30 Add columns (g), (i), and (j) of line 28b					30 ( )
31 Total partnership and S corporation income or (loss). Combine lines 29 and 30. Enter the result here and include in the total on line 40 below					31

Part III Income or Loss From Estates and Trusts

32	(a) Name	(b) Employer ID number
A	MELVINE B. ATKINSON CHAR.REM.TR.	59-6975283
B		
C		
D		
E		

	Passive Income and Loss		Nonpassive Income and Loss	
	(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
A				
B				
C				
D				
E				
33a Totals				
b Totals				
34 Add columns (d) and (f) of line 33a				34
35 Add columns (c) and (e) of line 33b				35 ( )
36 Total estate and trust income or (loss). Combine lines 34 and 35. Enter the result here and include in the total on line 40 below				36

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) – Residual Holder

37	(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see page E-4)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b

38 Combine columns (d) and (e) only. Enter the result here and include in the total on line 40 below — 38

Part V Summary

39 Net farm rental income or (loss) from Form 4835. Also, complete line 41 below — 39

40 TOTAL income or (loss). Combine lines 26, 31, 36, 38, and 39. Enter the result here and on Form 1040, line 18 ▶ — 40

41 Reconciliation of Farming and Fishing Income: Enter your gross farming and fishing income reported in Parts II and III and on line 39 (see page E-4) — 41

Form **8801**

Department of the Treasury
Internal Revenue Service

Credit For Prior Year Minimum Tax—Individuals and Fiduciaries

▶ Attach to your tax return.

OMB No. 1545-1073

1993

Attachment Sequence No. **74**

Name(s) shown on return

MELVINE B. ATKINSON

Identifying number

263-18-1569

Part I Net Minimum Tax on Exclusion Items

1	Enter the amount from line 4 of your 1992 Form 6251. Form 1041 filers, see instructions	1	23278
2	Enter adjustments and preferences treated as exclusion items. See instructions	2	31011
3	Minimum tax credit net operating loss deduction. See instructions	3	( )
4	Combine lines 1, 2, and 3. If zero or less, enter -0- here and on line 15 and go to Part II. If more than $150,000 and you were married filing separately for 1992, see instructions	4	54289
5	Enter the amount from line 12 of your 1992 Form 6251. Form 1041 filers, enter $20,000	5	30000
6	Enter the amount from line 13 of your 1992 Form 6251. Form 1041 filers, enter $75,000	6	112500
7	Subtract line 6 from line 4. If zero or less, enter -0- here and on line 8 and go to line 9	7	
8	Multiply line 7 by 25% (.25)	8	
9	Subtract line 8 from line 5. If zero or less, enter -0-. If completing for a child under 14, see instructions	9	30000
10	Subtract line 9 from line 4. If zero or less, enter -0- here and on line 15, and go to Part II	10	24289
11	Multiply line 10 by 24% (.24). Form 1040NR filers, see instructions	11	5829
12	Minimum tax foreign tax credit on exclusion items. See instructions	12	
13	Tentative minimum tax on exclusion items. Subtract line 12 from line 11	13	5829
14	Enter the amount from line 21 of your 1992 Form 6251, or line 38c of 1992 Form 1041, Schedule H	14	3146
15	Net minimum tax on exclusion items. Subtract line 14 from line 13. If zero or less, enter -0-	15	2683

Part II Minimum Tax Credit and Carryforward to 1994

16	Enter the amount from line 23 of your 1992 Form 6251, or line 39 of your 1992 Form 1041, Schedule H	16	2683
17	Enter the amount from line 15 above	17	2683
18	Subtract line 17 from line 16. If less than zero, enter as a negative amount	18	
19	1992 minimum tax credit carryforward. Enter the amount from line 35 of your 1992 Form 8801	19	
20	Enter your 1992 unallowed credit for fuel produced from a nonconventional source, plus your 1992 unallowed orphan drug credit. See instructions	20	
21	Combine lines 18, 19, and 20. If zero or less, stop here and see instructions	21	
22	Enter your 1993 regular income tax liability minus allowable credits. See instructions	22	
23	Enter the amount from line 26 of your 1993 Form 6251, or line 37 of your 1993 Form 1041, Schedule H	23	
24	Subtract line 23 from line 22. If zero or less, enter -0-	24	
25	Minimum tax credit. Enter the smaller of line 21 or line 24. Also enter this amount on the appropriate line of your 1993 tax return. See instructions	25	
26	Minimum tax credit carryforward to 1994. Subtract line 25 from line 21. See instructions	26	

Supreme Court, U.S.
FILED
SEP 12 2003
OFFICE OF THE CLERK

(2)

No. 03-86

In the Supreme Court of the United States

ESTATE OF MELVINE B. ATKINSON, DECEASED, AND CHRISTOPHER J. MACQUARRIE, EXECUTOR, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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16 pp

QUESTION PRESENTED

Whether the trust established by Melvine B. Atkinson failed to qualify as a charitable remainder annuity trust under 26 U.S.C. 664(d)(1), with the result that Atkinson's estate was not entitled to a charitable deduction under 26 U.S.C. 2055(e)(2) for the value of the remainder interest.

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In the Supreme Court of the United States

No. 03-86

ESTATE OF MELVINE B. ATKINSON, DECEASED, AND CHRISTOPHER J. MACQUARRIE, EXECUTOR, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is reported at 309 F.3d 1290. The opinion of the Tax Court (Pet. App. 12a-23a) is reported at 115 T.C. 26.

JURISDICTION

The judgment of the court of appeals was entered on October 16, 2002. The petition for rehearing was denied on February 3, 2003 (Pet. App. 24a-25a). The petition for a writ of certiorari was filed on May 5, 2003 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On August 9, 1991, Melvine B. Atkinson (whose estate is the taxpayer in this estate tax case) created and funded an irrevocable annuity trust. Pet. App. 1a–2a, 12a–13a. The document creating the trust stated that Atkinson desired to establish a charitable remainder annuity trust (CRAT). *Id.* at 2a, 13a. A CRAT is a trust that pays an annuity to noncharitable beneficiaries during their life and pays the remainder interest to charity. The federal estate tax allows the settlor of a valid CRAT a charitable deduction for the value of the charitable remainder interest. 26 U.S.C. 664(d)(1), 2055(e)(2).

The annuity trust established by Atkinson first provided her with an annuity for life. Pet. App. 2a, 13a. Upon her death, the trust was to pay the same annuity to several secondary beneficiaries, contingent upon their paying the estate and death taxes attributable to their shares. *Id.* at 2a–3a, 13a–14a. Upon the deaths of the secondary beneficiaries, the remainder was to be paid to charity. *Id.* at 2a.

The annuity trust did not, however, make the required annuity payments to Atkinson from its creation through Atkinson's death on June 7, 1993. Pet. App. 3a, 10a, 13a, 19a. This breached the requirements of 26 C.F.R. 1.664-1(a)(4), which specify that CRATs must comply with CRAT rules from formation through final disposition of assets. Christopher J. MacQuarrie (the trustee of the trust and executor of the estate) claimed that he sent Atkinson checks written on another trust but that Atkinson did not cash them. Pet. App. 3a, 10a, 13a, 19a; Tr. 427–428. Petitioners, however, introduced no documentary evidence (such as photocopies of checks or bank records) to support that assertion, and

the annuity trust was not reduced by annuity checks or by any transfers into the other trust. *Ibid.*

After Atkinson's death, the secondary beneficiaries were unwilling to pay the estate and death taxes due on their respective shares of the annuity. Pet. App. 3a–4a, 13a–15a. One of the secondary beneficiaries (Mary Birchfield, Atkinson's care giver) demanded that she be paid her share of the annuity free of tax. *Ibid.* After a dispute, and in exchange for relinquishing any claims she might have against the estate, Birchfield received payments from MacQuarrie out of the annuity trust equal to her share of the annuity unreduced by the taxes. *Ibid.* The payments to Birchfield made it necessary to invade the annuity trust to pay the estate's debts. *Id.* at 4a, 15a. This invasion of corpus breached the requirement of 26 U.S.C. 664(d)(1)(B) that a CRAT may not make noncharitable payments other than the required annuity payments.

On its estate tax return, the estate claimed a charitable deduction for the present value of the remainder interest in the annuity trust. Pet. App. 3a–4a, 13a. The Commissioner disallowed the deduction and asserted an estate tax deficiency, explaining that "it has not been established that the estate is entitled to a charitable deduction in any amount." *Id.* at 4a, 15a–16a, 35a.

2. Petitioners sought review of the asserted deficiency in the Tax Court. In his pretrial memorandum, the Commissioner maintained that the annuity trust violated the CRAT rules because it did not make annuity payments to Atkinson and because the Birchfield payments exposed the trust to liability for noncharitable obligations other than annuity payments. Pet. App. 15a–16a, 34a, 36a. Petitioners responded that the matter of Atkinson's not receiving payments was a new issue and that they lacked sufficient time to locate

documents regarding the payments. *Id.* at 33a–39a. At trial, the court rejected petitioners' attempt to shift the burden of proof to the Commissioner. Tr. 18–25. Although the court left the record open for other matters, petitioners did not ask the court to leave the record open for documents concerning the payment issue. See, *e.g.*, Tr. 486–492.

The Tax Court agreed with the Commissioner that the estate was not entitled to a charitable deduction for the remainder interest in the annuity trust. Although the annuity trust document was consistent with the CRAT rules, the trust did not function as a CRAT. Pet. App. 16a–23a. It did not make the required annuity payments to Atkinson (*id.* at 18a–21a), and the payments to Birchfield made it necessary to invade the trust to satisfy the estate's noncharitable obligations, including the estate and death taxes due with respect to those payments (*id.* at 21a–22a).

3. The court of appeals affirmed. Pet. App. 1a-11a. The court rejected petitioners' argument that there was never an interest conveyed to noncharitable beneficiaries (a "split interest") to trigger the CRAT rules because none of those beneficiaries agreed to pay the taxes due, and thus none qualified under the terms of the trust. Pet. App. 8a–10a. The court noted that, under the Treasury Regulations, property interests transferred during the life of a decedent, including contingent interests, are deemed to pass immediately unless the possibility of the occurrence of the contingency is so remote as to be negligible. *Id.* at 9a. The court further observed that, at the time of the creation of the annuity trust, the possibility that at least one of the secondary beneficiaries would agree to the tax payment, and thus satisfy the contingency, was not remote. *Id.* at 9a–10a. At the creation of the trust, there was

thus a split interest between the secondary annuity beneficiaries and the charitable remaindermen and, "[f]rom that moment on, the trust was required to operate as a CRAT in order to preserve its ability to qualify for a deduction of the charitable remainder." *Id.* at 10a. The court held that, because the trust failed to make the required annuity payments to Atkinson, her estate was not entitled to a deduction for the charitable remainder. *Id.* at 10a–11a. In light of that conclusion, the court did not address whether the payments to Birchfield also violated the CRAT rules. *Id.* at 5a n.2.

The court concluded that petitioners' other arguments, including their arguments regarding the notice of deficiency, "are without merit and deserve no substantial discussion." Pet. App. 5a n.2. The petition for rehearing was thereafter denied without comment.[1] *Id.* at 24a–25a.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. Section 2055(a) of the Internal Revenue Code allows an estate tax deduction for amounts donated to charity by a decedent. 26 U.S.C. 2055(a). Section 2055(e)(2) imposes limits on such deductions, however, that apply when an interest in the same property "passes or has passed" from a decedent for *both* charitable and noncharitable uses. 26 U.S.C. 2055(e)(2).

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[1] In their rehearing petition, petitioners proffered what purport to be copies of Atkinson's 1991, 1992, and 1993 income tax returns. Pet. App. 41a–67a. Those returns were not introduced in the Tax Court and are not part of the record on appeal. Fed. R. App. P. 10(a), 14.

Under that statute, if the charitable interest in the property is a remainder interest, an estate tax deduction is not allowed unless the charitable remainder meets one of several specified requirements, such as qualifying as a CRAT, as defined by 26 U.S.C. 664(d)(1). In 1991, when Atkinson created and funded the annuity trust, CRATs were required to pay the noncharitable beneficiaries at least annually a sum certain of at least 5 percent of the initial net fair market value of the property placed in trust, were prohibited from making any other noncharitable payments and were required to donate the remainder to charity. 26 U.S.C. 664(d)(1)(1988).[2]

Congress enacted these provisions as part of the Tax Reform Act of 1969, Pub. L. No. 91-172, §§ 201(d), (e), 83 Stat. 560–564. Their purpose was to combat abuses under prior law by matching the amounts of charitable deductions in the present with the present value of the amounts to be donated to charity in the future. Congress required CRATs to pay an annuity so that they could not be used to avoid the income-distribution requirements imposed upon private foundations and other tax-exempt organizations. S. Rep. No. 552, 91st Cong., 1st Sess. 89–90 (1969); H.R. Conf. Rep. No. 782, 91st Cong., 1st Sess. 295–296 (1969); see Pet. App. 18a-19a. Congress limited the amount of the annuity to prevent CRATs from claiming charitable deductions in excess of the amounts that would ultimately reach charity. S. Rep. No. 552, *supra*, at 86–90.

Consistent with that intent, Treasury regulations require that the trust's governing instrument comply with the CRAT rules and that the trust must function

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[2] The 1997 amendments to 26 U.S.C. 664(d)(1) are not applicable to the annuity trust. See Pet. App. 7a n.3.

exclusively as a CRAT from its creation. 26 C.F.R. 1.664-1(a)(4). Courts have consistently held that a trust's violation of the CRAT rules results in the complete disallowance of any deduction for the charitable remainder. *Burdick* v. *Commissioner*, 979 F.2d 1369 (9th Cir. 1992); *Estate of Johnson* v. *United States*, 941 F.2d 1318 (5th Cir. 1991); *Estate of Gillespie* v. *Commissioner*, 75 T.C. 374 (1980); *Estate of Sorenson* v. *Commissioner*, 72 T.C. 1180, 1185–1186, 1191, 1195 (1979); see Richard B. Stephens et al., *Federal Estate and Gift Taxation* ¶ 5.05[4][b] (8th ed. 2002).

2. The courts below correctly concluded that the annuity trust created by Atkinson as a CRAT on August 9, 1991, failed to comply with the CRAT rules and that the estate was therefore not entitled to a charitable deduction for the remainder.

Section 2055(e)(2) applies to situations in which an interest in property "passes or *has passed*" (emphasis added) from the decedent to both charitable and noncharitable recipients. The regulations under this statute look to 26 U.S.C. 2056(c) and its regulations to determine whether an interest in property "passes or has passed" at the formation of a trust. 26 C.F.R. 20.2055-2(e)(1)(i). That statute and its regulations specify that property interests transferred during a decedent's life are considered as having passed from the decedent to the recipient. 26 U.S.C. 2056(c)(4); 26 C.F.R. 20.2056(c)-1(a)(5) (formerly 26 C.F.R. 20.2056(e)-1(a)(5) (1991)). Even if an interest created during a decedent's life is subject to a date-of-death contingency in order to become effective, that contingency prevents the property interest from having "passed" during the decedent's life only when the possibility of the

contingency occurring is so remote as to be negligible.[3] 26 C.F.R. 20.2055-2(e)(1)(i).

In the instant case, when Atkinson created and funded the annuity trust, there was a non-remote chance that at least one of the secondary beneficiaries would pay the taxes due and accept the post-death annuity. Pet. App. 8a–10a, 18a–19a. The CRAT rules were thus triggered at the creation of the annuity trust because interests in the same property passed from Atkinson to the secondary annuity beneficiaries and to the charitable remaindermen. *Ibid.* To maintain its CRAT status, the annuity trust had to "function

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[3] Throughout their petition, petitioners argue that the annuity trust did not have to make annuity payments to Atkinson because her annuity interest ended at her death. In essence, petitioners contend that an *inter vivos* CRAT can disregard the CRAT rules until the decedent dies and the post-death status of the split interest is ascertained. That argument, however, ignores the requirement in the Treasury Regulations that a CRAT "must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust." 26 C.F.R. 1.664-1(a)(4). It also ignores the legislative goal of preventing CRATs from being used to circumvent the income-distribution requirements imposed upon private foundations. S. Rep. No. 552, *supra*, at 89–90; H.R. Conf. Rep. No. 782, *supra*, at 295–296; see Pet. App. 18a-19a ("If there were no such requirement [that CRATs actually make annuity payments of at least 5 percent of initial fair market value], a charitable remainder trust could be used to accumulate trust income tax-free, while a private foundation would remain limited in the amount of income it might accumulate."). Although Atkinson could have avoided the CRAT rules by giving herself a lifetime interest in a trust with remainder to charity upon her death (see 26 U.S.C. 2055(e)(2)), once she created the annuity trust as a CRAT (and created in the trust a split interest between the secondary beneficiaries and the charitable remaindermen), the trust had to follow the CRAT rules by making the annuity payments to Atkinson.

exclusively" as a CRAT from the start. 26 C.F.R. 1.664-1(a)(4). The courts below correctly found that the annuity trust failed to function as a CRAT because it failed to make annuity payments to Atkinson during her lifetime. They therefore properly concluded that the estate was not entitled to a charitable deduction for the remainder interest. Pet. App. 3a, 10a–11a, 13a, 18a–21a. Further review of these factual determinations "concurred in by two lower courts" is not warranted. See *Tiffany Fine Arts, Inc.* v. *United States*, 469 U.S. 310, 317–318 n.5 (1985); *Rogers* v. *Lodge*, 458 U.S. 613, 623 (1982).

3. Petitioners err in claiming (Pet. 5, 19–22, 25–27) that the decision in this case conflicts with *Commissioner* v. *Citizens & Southern National Bank*, 147 F.2d 977 (5th Cir. 1945), aff'g, *Estate of Whitehead* v. *Commissioner*, 3 T.C. 40 (1944). Petitioners cite *Citizens & Southern* for the proposition that actual compliance with the CRAT rules is not required if the founding documents of the trust are in order. That case, however, is an income tax case that was decided approximately 25 years before the adoption of the CRAT rules. In *Citizens & Southern*, an estate formed a corporation to make both noncharitable and charitable payments. 3 T.C. at 41–42, 46–47. The estate deducted on its income tax returns for 1936 through 1939 the amounts that it gave to the corporation and directed it to pay to charities. *Id.* at 43–47. The Commissioner disallowed these deductions because the corporation was not exclusively charitable. *Id.* at 43–44, 46–48. The Tax Court allowed the deductions for the amounts given for charity, however, because the corporation, as the estate's agent, was required to follow the estate's instructions. *Id.* at 48–49. The court stated that, if the money given for charity was misused by the corporation, other

authorities could then correct the problem. *Id.* at 49. The Fifth Circuit affirmed, stating that it would not "further labor the points" in the lower court's opinion. 147 F.2d at 980–981.

Contrary to petitioners' argument, the decision in *Citizens & Southern* does not authorize fiduciaries to ignore the CRAT rules. *Citizens & Southern* was an income tax case that dealt with deductions for money presently set aside for, or given to, charity. It did not construe the estate tax provisions that are involved in this case, which were not even enacted until a quarter-century later. And, when Congress enacted the CRAT provisions, it was for the purpose of avoiding preexisting abuses, by more accurately matching the amounts of present estate tax deductions with the present value of future charitable donations. The 1944 decision cited by petitioners thus did not, and obviously could not, purport to interpret the 1969 statute involved in this case.[4]

4. Petitioners also err in asserting (Pet. 5, 7–11, 19–20) that there is a conflict between this case and the cases that have concluded that the settlement of bona fide probate disputes can eliminate the split interest

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[4] Petitioners similarly err in relying (Pet. 8, 19–20) on other pre-1969 cases, including *Hight* v. *United States*, 256 F.2d 795 (2d Cir. 1958) (allowing estate tax deduction for actual donations to qualified charities over IRS's objection that the will could be read as allowing donations to "benevolent" organizations that were not qualified charities); *Norris* v. *Commissioner*, 134 F.2d 796 (7th Cir.) (denying estate tax deduction for actual donations to charity because the instructions in the decedent's will were too contingent), cert. denied, 320 U.S. 756 (1943). Those cases do not conflict with the instant case and, in any event, were decided before Congress enacted the Code sections at issue here and therefore do not address them.

that triggers the CRAT rules. The cases cited by petitioners follow a similar pattern in which a decedent executed a will or other revocable testamentary document that would not create a split interest until the decedent died.[5] In these cases, after the decedent died, there was either a spousal election or a *bona fide* probate dispute that resulted in the division of property among the charitable and noncharitable beneficiaries, giving each its own specified share. Although the testamentary documents in these cases could have been interpreted or applied to create a date-of-death split interest in the property, the split never occurred due to valid elections or dispute settlements.[6] And, because no split interest existed to trigger the CRAT rules, the estate was entitled to a charitable deduction for the property that passed to charity.

The present case obviously does not fit that pattern. During her lifetime, Atkinson created and funded the irrevocable annuity trust as a CRAT on August 9, 1991. The annuity trust, and the split interests established therein, had been in existence for almost two years when Atkinson died on June 7, 1993. Because the an-

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[5] See, *e.g.*, *Flanagan* v. *United States*, 810 F.2d 930 (10th Cir. 1987); *First Nat'l Bank of Fayetteville* v. *United States*, 727 F.2d 741 (8th Cir. 1984); *Oetting* v. *United States*, 712 F.2d 358 (8th Cir. 1983); *Estate of Strock* v. *United States*, 655 F. Supp. 1334 (W.D. Pa. 1987); *Northern Trust Co.* v. *United States*, 41 A.F.T.R.2d 1523 (N.D. Ill. 1977); Rev. Rul. 89-31, 1989-1 C.B. 277; Rev. Rul. 83-20, 1983-1 C.B. 231; Rev. Rul. 78-152, 1978-1 C.B. 296.

[6] These cases are consistent with the policy established in 26 U.S.C. 2055(e)(3)(F), which specifies that the death of the income beneficiary or the termination of the trust before the due date of the estate tax return, which leaves the charitable entity as the sole beneficiary of the trust, is to be treated as a reformation of the governing documents that makes the charitable deduction allowable.

nuity trust began within the ambit of the CRAT rules, it had to obey those rules in order to maintain its CRAT status and to secure for the estate a deduction for the charitable remainder. 26 C.F.R. 1.664-1(a)(4). See *Burdick*, 979 F.2d at 1369–1371 (termination of split interest solely to obtain charitable deduction will not be honored); *Estate of Johnson*, 941 F.2d at 1319–1321 (deduction disallowed when trust could not be reformed to avoid split interest). The decisions cited by petitioners, by contrast, involve situations in which the property was never within the realm of the CRAT rules in the first place. They are not authority for allowing a split-interest trust to violate the governing rules. There is thus no conflict among the circuits to warrant further review of the decision in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 2003